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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

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Introduction

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in its resolution S-3/1 of 25 May 1994 and extended for the second time by resolution 1996/76 of 23 April 1996, the Special Rapporteur visited Rwanda from 18 to 21 October 1996, as part of the follow-up to his mission, and, from 6 to 10 December 1996, to investigate the human rights situation following the mass return of refugees from the exodus.

2. The Special Rapporteur feels compelled at this point to draw attention to the difficulties he is experiencing with the Centre for Human Rights, particularly the Special Procedures Branch, in carrying out his mission. As will be noted, the last field visit in 1995 took place at the beginning of December 1995 and the first visit in 1996, following the extension of his mandate in March 1996, did not take place until the second half of October, practically a 10-month interval between field visits. Several planned visits did not come to fruition. To mention only two cases, a first visit, scheduled for 13 to 18 May 1996, did not take place, although everything had already been approved, and it was only three days to the departure date. Two reasons were given. Firstly, the Special Rapporteur was asked to postpone his visit until the return of the head of the Field Operation, who was to travel to Burundi. Then, when the Special Rapporteur rightly refused, as he was unavailable at the suggested time, he was told that not only would he have to bring his departure forward, but also that he would have to change his itinerary. Because of other commitments, the visit could not be carried out. The second visit, scheduled from 11 to 14 August 1996, had to be cancelled for lack of resources. The Special Rapporteur was given an advance of $450 for subsistence expenses, which actually amounted to $1,050, leaving him to pay $600 himself.

3. Two points should be made clear: (a) at a time when the Human Rights Operation in Rwanda was advising staff not to travel on Cameroon Airlines aircraft and to be careful in their choice of airlines, the Special Rapporteur was forced to travel by Cameroon Airlines; this is particularly regrettable in that experts and special rapporteurs have no insurance coverage; (b) the Special Rapporteur's budget of $69,770 for the current financial year had not yet been touched, although the year was drawing to a close. If the United Nations financial criteria were to be formulated and applied in this way, they would preclude third-world experts, particularly those from Africa, from working for the Organization, especially since the position of special rapporteur is purely honorary.

4. The two field visits actually carried out were therefore hard won. The zeal displayed by staff suggests competition between the High Commissioner for Human Rights and the Special Rapporteur. For example, in an attempt to prevent the Special Rapporteur from making his last visit, Geneva first pleaded lack of funding, then claimed that it would be "lèse-majesté" to make a trip at the same time as the High Commissioner.

5. It is interesting to note that, whereas it has traditionally been States which have placed obstacles in the way of special rapporteurs, in Rwanda it is actually various United Nations services that are preventing the Special Rapporteur from carrying out his mandate. It is to be hoped that the

High Commissioner, whom the Special Rapporteur has approached more than once, will finally put an end to this situation, which has gone on too long.

6. In the course of his two visits, the Special Rapporteur met the following prominent figures:

(a) Prominent national and local figures: Mr. Pierre-Célestin Rwigema, Prime Minister; Mr. Anastase Gasana, Minister for Foreign Affairs and Cooperation; Mr. Ignace Karuhije, Prefect of Ruhengeri; and the burgomasters of the communes of Kicukiro (Kigali-City prefecture), Cyumba (Byumba prefecture) and Isumo (Kibungo prefecture);

(b) Prominent non-Rwandan figures: Mgr. Juliusz Janusz and Mgr. Nguyên Van Tôt, Apostolic Nuncio and Deputy Apostolic Nuncio in Rwanda, respectively; representatives of the International Committee of the Red Cross and of the High Commissioner for Refugees; Judge Honoré Rakotomanana, Deputy Prosecutor of the International Criminal Tribunal for Rwanda and his closest colleagues.

7. During his visit to Rwanda, the Special Rapporteur also held working meetings with Mr. Javier Zuñiga, the new head of the Human Rights Field Operation in Rwanda, with human rights observers in charge of the Operation's various units and sub-units (monitoring; administration of justice and legislative reform; prisons and detention centres; education and development; situation of women, children and Twas; and return and reintegration of refugees). During his first visit, the Special Rapporteur visited the teams of observers in the field in Gisenyi and Ruhengeri prefectures, as well as in Kibungo and Byumba prefectures. On that occasion, he also visited the Gisenyi Court of First Instance, where he spoke with two judges who had recently been assigned there, as well as the Zairian refugee camp in Gisenyi and the transit centres for Rwandan returnees in Nkamira (Gisenyi prefecture) and Gihembe (Byumba prefecture). During his second visit, the Special Rapporteur visited the Gitagata Rehabilitation and Production Centre in Bugesera, Rural-Kigali prefecture, and the returnees' resettlement site in the commune of Kicukiro on the same day, as well as the Bukora ranch in Kibungo prefecture, the Gihembe and Kivuye transit centres in Byumba prefecture and the Nyakarambi transit centre in Kibungo prefecture.

8. During his first visit, the Special Rapporteur also met Judge Damien Vandermeersch, of the Brussels Crown Prosecutor's Office (24 October), to ask about progress in proceedings instituted by the Belgian authorities against presumed perpetrators of the genocide.

9. The Special Rapporteur would like to express his sincere thanks to all the prominent persons who received and supported him in carrying out his mission. The talks he held and the visits he made in the field enabled him to assess the situation regarding the genocide, current human rights violations and the return of refugees to Rwanda.

I. GENOCIDE

10. Genocide and other crimes against humanity committed in Rwanda since April 1994 will continue to be of concern to the international community for

some time. For this reason, they are again the central focus of this report. There are two separate aspects to this question: the progress made in investigating these crimes and the proceedings against the presumed perpetrators.

A. Inquiry into the genocide

11. The inquiry into the genocide is taking its course. As in the preceding report (E/CN.4/1996/68), the progress made can be assessed from two standpoints: the general human rights situation, particularly the underlying causes of human rights violations in Rwanda, and the special situation of vulnerable groups.

1. General situation: the causes of the genocide

12. Two years after it occurred, the genocide as a phenomenon in the etymological sense, continues to generate numerous works and studies and much research supplementing the reports of human rights observers. All in all, these investigations tend to confirm the original hypothesis contained in the preliminary report (E/CN.4/1995/7), particularly regarding the underlying causes of human rights violations, which represent the main focus of this report.

13. These causes are many, varied and complex. For the sake of simplicity, they are divided here, without any scientific pretensions, into three main categories: politico-historical, economic and socio-cultural.

(a) The politico-historical causes

14. Although it is not possible to establish any genuine order of precedence among the various causes, the politico-historical dimension seems to be the most important because of its conditioning and determining effect on the others. It is both political and historical in that the basis of the conflict between the two groups, Hutu and Tutsi is political - i.e. power - and is rooted in the history of this people. Responsibility lies less with the ancestors of past centuries than with the authorities of more recent periods, firstly colonization and then the African regimes.

15. Although pre-colonial Rwanda was inhabited by the same peoples as are found there today, namely, the Hutus (of Bantu origin), the Tutsi (of Hamitic descent) and the Twas (pymoid type), these three peoples, organized in more or less autonomous kingdoms, did not constitute opposing dominant and dominated "ethnic groups". These kingdoms were bound to the Mwami (king) within a feudal monarchic system by a contract of patronage known as "ubuhake". Moreover, the division of labour whereby Hutus were farmers and Tutsis herders, which placed economic power in the hands of the latter, did not become established as a fixed and closed system like the caste system. It was also possible to move from one category to the other, as in the case of a Tutsi who has lost his cattle, i.e. his wealth, and becomes a Hutu, or a Hutu who, having acquired enough cattle, becomes a member of the Tutsi group. It is reported that, during an impromptu census, the son of a king (Tutsi) who was one cow short of the ten-head of cattle required would have been classed as a Hutu if he had not been made a gift of the missing animal.

16. It was the colonizers, first the Germans then the Belgians, who as part of their policy of divide and rule, depended on the Tutsi group to govern the conquered territory under a system of indirect rule, thus upsetting the existing social equilibrium. The resulting imbalance gradually became more marked, marginalizing the Hutus. Moreover, in order to give an ideological flavour to their concoction and thus consolidate it, they created the myth of the superiority of the Tutsis over the two other ethnic groups, thus institutionalizing the ethnic division. This ideology of discrimination was not only reflected in the indication of ethnic group on identity cards, but also reinforced in the schools. The Belgian colonialists supported the Hutu social revolution only because they felt betrayed by their Tutsi allies' demands for independence.

17. With independence, the political dimension became more closely linked with the ethnic dimension, so that the conflict became essentially one of opposition between Hutus/republicans and Tutsis/feudal-monarchists. The new regime, presided over successively by Grégoire Kayibanda and Juvénal Habyarimana, regardless of the official line on national unity, completed the work of the colonialists by exacerbating ethnic rivalries and using them as a basis for its own survival. This policy of ethnic discrimination was aimed mainly at the Tutsi group. It manifested itself, in particular, through the introduction of quotas in schools, the civil service and government and exclusion from the army, the police and information services. However, although the Tutsis were the main target of this discriminatory policy, the other groups were not spared. The Twas, and even some Hutus, also suffered, as the Habyarimana regime adopted a policy of regionalism, favouring the northern Hutu (Gisenyi and Ruhengeri) - the Banduga - at the expense of those in the south and the centre - the Bakiga; it was in these regions that the opposition parties emerged in 1990-1991.

18. The Rwandan conflict is thus seen as a political conflict with a strong ethnic flavour. But the political dimension was based on economic factors.

(b) <u>The economic causes</u>

19. The economic causes, which can be reduced to the interaction between underdevelopment - an inherent defect in African countries - and violence, do not call for any special analysis. Suffice it to say that the situation in Rwanda is exacerbated in particular by two major handicaps: it is a country which is both land-locked and overpopulated. As a land-locked country, it has long been dependent on the aid of donor States and is one of the least developed countries. Poverty in general, and food insecurity in particular, have been heavily exploited by those in power, who have dazzled the executioners with promises of a better world through the acquisition of the property and wealth of the victims, as evidenced by the systematic looting which accompanied the massacres.

20. Overpopulation, which should be emphasized here, is a fact beyond question. At the outbreak of hostilities, a population of 7,700,000 was living in a tiny area of 26,338 km^2 - a population density of 300 per km^2. Rwanda has the highest population density in the world after Bangladesh. This overpopulation gives rise to frequent disputes over land and its use.

21. These disputes are exacerbated by the country's agricultural and pastoral tradition: the Hutu are mainly agriculturalists, the Tutsi herders and the Twa hunters. The situation is further complicated by the system of land use, where properties are laid out, not in villages as everywhere else in Africa, but around hills. For its inhabitants, each hill is both a working and a living area, so that any land dispute inevitably becomes personalized. Any attempt to occupy a neighbour's field is immediately seen as an attack on his person. The many disputes which arise may even pit family members against one another and result in loss of life, particularly when Hutu farmers are ranged against Tutsi herders in search of more grazing land.

22. The small size of the country was actually used as a pretext by the Rwandan authorities in refusing to permit former refugees to return. The return of former refugees was not unrelated to the 1990 crisis. The former refugees, many of whom had been born in exile, had repeatedly, through associations formed abroad, expressed the desire to return to Rwanda. While acknowledging the legitimacy of this desire, those in power at the time had neither the political will nor the courage to give them satisfaction. It was these refugees who provided the recruits for the units which formed the backbone of the Rwanda Patriotic Army (RPA), the armed wing of the Rwanda Patriotic Front (RPF), which began attacking government troops in October 1990. This problem had not been solved when the massacres occurred in 1994, despite the Agreement concluded in Arusha on 9 June 1993 between the Rwandan Government and the RPF on the repatriation of Rwandan refugees and the resettlement of displaced persons. To this extent, the war waged by the former refugees and the failure to implement the Arusha Peace Agreement are also at the root of the Rwandan crisis, of which the socio-cultural dimension was the essential ideological catalyst.

(c) The socio-cultural causes

23. For their own political ends, successive regimes and systems gradually conditioned the population to psychological and social acceptance of ethnic discrimination. This conditioning took place in particular in the family and, above all, in the schools.

24. Family education played a not insignificant role, in that it is the family that has the heavy responsibility of moulding the child's attitudes from an early age and making him receptive to ethnic discrimination. Many witnesses report that parents teach their children very early on that members of the other ethnic group are their enemies. One group demonized the other. The Hutu, for example, identified the Tutsi with "snakes". In addition, individuals who dared to enter into mixed marriages were excluded from the family.

25. The schools, for their part, took it upon themselves to develop actual theories of ethnic differences, based on a number of allegedly scientific data which were essentially morphological and historiographical. In the first case, the two main groups can be differentiated by appearance, as the Tutsi are "long", whereas the Hutu are "short"; the Tutsi are handsome, genuine "black-skinned Europeans", while the Hutu are "ugly", genuine "Negroes". The fact that the Hutu occupied the country before the Tutsi makes them indigenous, whereas the Tutsi, as descendants of Europeans, are invaders.

These purportedly scientific data inevitably created a psychosis of fear and mistrust which gradually became a veritable culture of mutual fear and led to another theory, that of pre-emptive self-defence based on the "kill or be killed" principle. This theory was a major factor in the 1994 genocide which claimed many victims, including vulnerable groups.

2. Special situation: vulnerable groups

26. While it is true that vulnerable groups, whether forced to do so or not, participated to varying degrees in the genocide and other crimes against humanity, the majority of them - women, children and Twas - were actually victims.

(a) Women

27. The situation of Rwandan women as victims is deplorable and continues to be so, despite the remedial measures taken.

28. Women seem to have been, and continue to be, the main victims, given the outrages to which they were subjected and the continuing after-effects. Firstly, many women have found themselves alone or widowed as a result of the genocide and hostilities. They have become de facto heads of families, compelled to minister to the needs of their families. According to the review Dialogue (October 1996), 70 per cent of the heads of families in Rwanda are women, half of whom are widows. Most of them are destitute and, try as they might, are unable to provide for their families. In his preceding report, the Special Rapporteur stated that rape had been used as a weapon of war and its consequences, particularly sexually transmissible diseases and unwanted children, were a major social concern.

29. Last but not least, rape as a weapon of war, has given rise to serious psychological and social problems. This diagnosis presented in the preceding report (E/CN.4/1996/68) was confirmed in a recent in-depth survey by three international human rights organizations: Human Rights Watch/Africa, Human Rights Watch Women's Rights Project and the International Federation of Human Rights Leagues. The report published following this survey shows that raped women are ostracized and isolated. They are too embarrassed or ashamed to seek medical assistance. This has led to the widespread practice of illegal abortion. In the circumstances, it is difficult to determine accurately the number of women raped and infected with the AIDS virus. However, according to the report, this number can be assumed to be high, given the situation prevailing before the hostilities. A study conducted by the Ministry of Health estimated that 25 per cent of the population was infected and up to 35 per cent of former FAR members, who played a leading role in acts of sexual abuse. In the case of women who have given birth after being raped and their babies, the situation is even more tragic. The above-mentioned report describes it as follows:

> "Often, women refused to register themselves by name at the hospital, preferring to remain anonymous. Some then abandoned their babies at the hospital two or three days after delivering. Many asked for a doctor of the same ethnicity as themselves. One woman handed over her baby to the Ministry of Family and the Promotion of Women, saying

'this is a child of the State'. Health professionals assume that a number of women gave birth in secret and later committed infanticide. They also believe that a number of women who gave birth in the hospital allowed their babies to die after returning home.

Other women decided to accept their child. In some families, the mother's decision to keep the child has caused deep divisions in the family. In others, the child is being raised normally within the community." (Shattered Lives: Sexual violence during the Rwandan genocide and its aftermath, New York/Boston/London/Brussels, Human Rights Watch, September 1996.)

30. A number of measures have been taken by the State and non-governmental organizations to remedy the serious harm suffered by Rwandan women as a result of the hostilities. The Conference on genocide, impunity and responsibility, held in Kigali in November 1995, for example, recommended giving special priority to women in carrying out the rehabilitation programme. Two types of assistance - material and social - would be provided. Material assistance would involve providing the basic necessities (food, housing, clothing, etc.) and social assistance would involve setting up income-generating projects, housing rehabilitation, treatment of physical mutilation and psychological trauma, the creation of a specialized medical unit for the treatment of complicated cases and the revision of legislation to provide for better protection. Unfortunately, lack of resources prevented anything more than very limited implementation of all these programmes.

31. However, in view of the scale of their needs and the limited resources of the State, Rwandan women decided to look after themselves. Accordingly, they set up a number of women's associations with various aims. These included, for example: Pro-Femmes/Twese Hamwe; Association de solidarité des femmes rwandaises (ASOFERWA); Benimpuhwe; Association des volontaires de la paix (AVP); Association des veuves du génocide d'avril; Isangano; Group Kamaliza; Benishyaka. All these associations are involved in socio-economic development, the socio-cultural development of women, or pacification and reconciliation activities. Most of them formed a collective and, in November 1994, launched an "Action for Peace Campaign". Other action by women's associations involved assistance to children, another vulnerable category of genocide victims.

(b) Children

32. As already stated in the preceding report (E/CN.4/1996/68), children, including nursing infants, were not spared by the massacres. They were doubly victimized, either as perpetrators used by the belligerents as an instrument to commit crimes against humanity, killing as civilians or soldiers, or as innocent victims witnessing atrocities against their parents and/or suffering atrocities themselves.

33. The survivors face two problems: family reunification and social reintegration. To deal with them, the Rwandan Government has set up a national commission on children in difficult circumstances. The commission's task is apparently being facilitated by the ongoing traumatism rehabilitation programme. In its August 1996 report on children in difficult circumstances,

the Ministry of Labour and Social Affairs (MINITRASO) states that the programme had trained 8,000 persons to work with children, of whom more than 200,000 had been provided with assistance. This assistance is particularly important for the commission, which has the heavy responsibility of caring not only for unaccompanied children in centres, but also street children, child soldiers and child prisoners.

34. A foster family programme has been set up by MINITRASO, which has reduced the number of unaccompanied children in centres and orphanages appreciably. In December 1994, for example, there were 10,381 unaccompanied children; by December 1995, this number had fallen to 8,303 and by August 1996 to 6,620 (Enfants: avenir du Rwanda, report by the Ministry of Labour and Social Affairs, in cooperation with UNICEF, No. 6, 15 August 1996).

35. A special assistance programme for street children has been set up by the Ministries for Planning and Youth and community groups. This programme is part of a larger project entitled: "Support for the social integration of young people in difficult circumstances". The project covers a number of development activities, including: functional literacy, educational reintegration, vocational training, involvement of young people in micro-enterprises, recreational and cultural activities and socio-economic reintegration.

36. MINITRASO, in cooperation with UNICEF, has adopted a programme for demobilizing child soldiers and returning them to civilian life. Up to August 1996, more than 700 demobilized child soldiers who had been re-educated in the Butare demobilization school had been transferred to a number of secondary schools in Rwanda. This programme is due to be strengthened, mainly with the assistance of the World Bank, the International Organization for Migration, Handicap International and African Humanitarian Action. The aim is to demobilize 10,000 child soldiers.

37. At the end of October 1996, the number of child prisoners stood at 1,353. Some of them are in prison with their mothers, who are accused of participating in the genocide. Other children are themselves accused of having committed acts of genocide. This group includes children less than 14 years old, some of whom, now aged 9, were 7 years old at the time when the acts were committed. Most of those who were less than 14 years old when they participated in the genocide have been transferred to the Gitagata re-education and production centre in Bugesera (Rural Kigali prefecture). They numbered almost 200 on 7 December 1996. This number is expected to be increased to 440 shortly, when the construction of dormitories, refectories and classrooms has been completed. The aim of the Centre, which is currently staffed by 14 social workers, is the re-education and social reintegration of these children. Many of them now attend normal classes with children from neighbouring villages. The intention is to return these children to their respective families on completion of the re-education process. However, the Government and other non-governmental organizations involved in aid to child victims of the genocide lack the resources to carry out all their projects. The same is true for the Twas.

(c) The Twas

38. As stated in the preceding report (E/CN.4/1996/68), the Twas were not spared by the massacres. They were targeted by the RPA, the former FAR and the militias.

39. Their present situation shows little improvement. A vulnerable group with innumerable needs, the Twas have thus far not benefited from any special assistance programme. They are confronted with political and administrative obstacles in their attempts to benefit from "positive discrimination" measures. Despite these obstacles, they have organized themselves into the Community of Indigenous Peoples of Rwanda (CAURWA). From 13 April to 10 May 1996, this association, with the assistance of the Human Rights Field Operation in Rwanda, carried out an in-depth survey of the general situation of the Twas after the genocide and massacres of 1994. In its report, CAURWA drew the following conclusions:

> "As a result of the recent bloodshed, Batwa have been massacred, have disappeared and have taken refuge in neighbouring countries. Some of the survivors have been arbitrarily arrested and imprisoned, so that only the elderly and children remain active ... The discrimination practised against them from time immemorial has not yet been totally eliminated."

40. The report recommends that the Rwandan Government, inter alia, "should carefully and impartially study the cases of Batwa detainees" being prosecuted for participating in the genocide

B. Proceedings against persons suspected of genocide

41. The backlog in the courts with jurisdiction to institute proceedings against persons suspected of genocide and other crimes against humanity is increasing everyday, and this is a matter of concern to the international community in general and to the victims in particular. However, it must be recognized that some significant progress was was made during the period covered by this report. The International Tribunal has only just started to operate and the national courts have been making some efforts.

1. The first steps of the International Tribunal

42. Since the International Tribunal for Rwanda began to operate and adopted its rules of evidence and procedure, it has held several sessions, whose purpose has been twofold: to adopt additional rules and procedures and to begin trials.

(a) The adoption of additional rules and procedures

43. During the past year, the International Tribunal spent two of its sessions completing its regulations relating to evidence and procedures.

44. At its first session, held in January 1996, as indicated in the fifth report (E/CN.4/1996/68), it adopted directives on the exercise of the rights of the defence and legal assistance, as well as the rules on the detention of persons arrested.

45. At its third plenary session held at The Hague on 5 July 1996, the Tribunal completed its rules of procedure and evidence and adopted the directive on the assignment of defence counsel and the rules governing the detention of persons awaiting trial or appeal before the Tribunal or detained on its orders.

(b) The beginning of the trials

46. The International Tribunal began its first trials, the investigation phase of which takes place in several stages and involves a number of obstacles.

47. The procedural phases of the investigation of the records of the persons suspected of genocide and other crimes against humanity are relatively lengthy. According to the statements made by the Prosecutor, there are schematically nine stages: preparation of indictments by the Prosecutor; confirmation of indictments by the judges; issuing of arrest warrants; arrest and transfer to the Arusha prison; initial appearance; exchange of evidence; proceedings relating to preliminary issues and witness protection measures; proceedings on the merits; and separate hearing for sentencing if the accused is found guilty.

48. On 1 December 1996, the Tribunal had issued 14 indictments against 21 persons suspected of genocide; had issued 21 international arrest warrants; had had 13 accused arrested; and had obtained the transfer of 6 of them, who are now detained in Arusha, while the 7 others who have not yet been transferred are imprisoned in Cameroon (4), Côte d'Ivoire (1), the United States (1) and Switzerland (1), which is about to extradite the person arrested and detained there. The trials, which were set for the first quarter of 1996, finally began on 26 September 1996. As the accused persons' counsels obtained postponements, the cases will be heard only in the first quarter of 1997, on the following dates: 9 January (ICTR-96-4-I, J.-P. Akayezu, former burgomaster of Gitarama); 20 February (ICTR-95-1-I, Cl. Kayishema, former prefect of Kibuye; and O. Ruzindana, shopkeeper in Kibuye); 6 March (ICTR-96-3-I, G.A.N. Rutaganda, second vice-president of the Interahamwe); 8 April (ICTR-96-15-I, J. Kanyabashi, former burgomaster of Butare); 8 May (ICTR-96-10-I, G. Ntakirutimana, Kibuye village doctor; and O. Ruzindana); 20 May (ICTR-96-8-I, E. Ndajambaje, former burgomaster of Butare); and 12 August (ICTR-96-17-I, G. Ntakirutimana).

49. As may be seen, the Tribunal is not only at the beginning of the proceedings against the persons suspected of the massacres and other acts that constitute serious and large-scale human rights violations, but it is far below the figure of 400 suspects mentioned in the report by the Secretary-General of the United Nations to the Security Council, dated 4 June 1995 (S/1995/457), and in the Special Rapporteur's preceding report (E/CN.4/1996/68, para. 55). Only seven, or about 1/60 of the total number, are at its disposal at present. Of the seven persons who have already

appeared, the trials of only three have begun. The most important of the three accused is Mr. Clément Kayhishema, the former prefect of Kibuye. Twenty-five charges have been brought against him, including that of having ordered and organized:

> "1. The massacres committed in the Catholic Church and in Saint Jean home in the town of Kibuye, where thousands of men, women and children were killed and many other people were injured, on 17 April 1994;
>
> 2. The massacres committed at the sports ground in Kibuye, where thousands of men, women and children were killed and many others were injured, on 18 and 19 April 1994;
>
> 3. The massacres committed in the church in Mubuga, where thousands of men, women and children were killed and many other persons were beaten up, between 14 and 17 April 1994;
>
> 4. The massacres committed in the Bisesero region, in which thousands of men, women and children were killed and many other persons were injured, on 18 and 30 June 1994 ..." (Case No. ICTR-95-11: The Prosecutor of the Tribunal v. Clément Kayhishema)."

50. The obstacles that the International Tribunal has encountered are essentially of three different types: the lack of resources, cautious cooperation by States and the fact that the Tribunal is composed of so few members.

51. Despite the progress made, the International Tribunal still lacks basic resources, in particular human and material resources. This was emphasized by its President in his first report to the General Assembly and the Security Council on 24 September 1996. The Tribunal's leading official describes the situation in the following terms:

> "Although the Tribunal has made great progress during its first year of existence, it still faces many challenges. The Office of the Prosecutor needs greater human and material resources if it is to continue and speed up its work. Between now and the beginning of the first trials, scheduled for the autumn, a great deal of material and legal preparatory work remains to be done: for example, the construction work must be finished, transport organized and arrangements made for the accommodation of victims and witnesses. If the Tribunal is to cope with such problems, it must be given sufficient means and receive the support of the international community". (A/51/399-S/1996/778, para. 77.)

52. Secondly, there is still a lack of cooperation, which is none the less essential, between the International Tribunal and States, particularly those whose territory provides shelter for persons who are suspected of crimes and who are wanted by the Tribunal. Non-cooperation seems to be the rule and cooperation the exception in this regard. Cooperation is forthcoming from a few States which have instituted proceedings against the alleged criminals. It must, however, be recognized that the circle of such States is widening, as shown by the measures they have taken to amend their legislation to assume

jurisdiction over cases and, if appropriate, excercise universal jurisdiction and/or cooperate with the International Tribunal. There is, however, still a great deal to be done.

53. A third type of difficulty which is of a procedural nature, has arisen as a result of the increase in the number of cases. Under rule 15 (c) of the rules of procedure and evidence of the International Tribunal, the judges, who have confirmed the indictments, may serve in the same cases only when such cases come before the Trial Chambers. As this incompatibility may affect several judges, particularly in combined cases, it is impossible to provide the Chamber in charge of the prosecution with the composition required by the Statute and the rules of procedure, i.e. three judges. The situation should be remedied by amending the rules of procedure in accordance with article 14 of the Tribunal's Statute.

II. Efforts by national courts

54. Significant progress has been made at the national level. In order to appreciate it, it is essential to distinguish between proceedings instituted in foreign courts and in Rwandan courts.

(a) Foreign courts

55. In his preceding report (E/CN.4/1996/68), the Special Rapporteur referred to the judicial proceedings instituted in some countries against the persons suspected of genocide. Reference will be made mainly to Belgium, Canada and Switzerland, not to mention the arrests made in Kenya, Côte d'Ivoire, the United States of America and, above all, Zambia. For example, the investigation proceedings against the four persons arrested and detained in Belgium have already been completed and the judicial authorities have already transferred two of the persons being prosecuted to the International Tribunal, which has, moreover, requested the extradition of the person arrested and detained in Switzerland.

56. Attention is drawn to two new developments, which are not equally significant and relate to national proceedings.

57. The first is the arrest, in Cameroon in March 1996, of 12 members of the former Rwandan regime who are accused of having instigated the genocide. They include Colonel Théoneste Bagosora, a former high-ranking FAR officer, and Ferdinand Nahimana, reputedly one of the "ideologists" of the genocide. Belgium had requested the extradition of the former in connection with the investigation into the murder of 10 Belgian Blue Helmets, but abandoned the proceedings following a decision by the Belgian Supreme Court. Rwanda also applied unsuccessfully to the Cameroonian authorities for the extradition of the persons arrested. In June 1996, the International Tribunal itself officially requested Cameroon to authorize the transfer of four persons arrested and detained in Yaoundé Central Prison: Théoneste Bagosora, Ferdinand Nahimana, Anatole Nsengiyumva and André Tagerura. The Government of Cameroon agreed to the request. However, the decision to transfer them took some time and was implemented only in January 1996.

58. The second development is, as has already been mentioned, the decision of a number of States to amend their legislation in order to cooperate with the International Tribunal and, as appropriate, assume jurisdiction over cases, thereby exercising universal jurisdiction. This is the case of Australia, Denmark, New Zealand and Switzerland, which have adopted legislation relating to cooperation with the International Tribunal. It is also the case of Belgium, whose Parliament adopted an act on 22 March 1996 on recognition of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and on cooperation with those tribunals (Damien Vandermeersch, "La loi du 22 mars 1996 relative à la reconnaissance du Tribunal international pour l'ex-Yougoslavie et du Tribunal international pour le Rwanda et à la coopération avec ces tribunaux", Revue de droit pénal et de criminologie, No. 7-8, 1996, pp. 855-888). The same is true of France, which adopted Act No. 96-432 on 22 May 1996; it brings French legislation into line with the provisions of Security Council resolution 955, which established the International Tribunal for Rwanda, and it was supplemented by a circular of 22 July 1996. Rwanda has taken steps along the same lines.

(b) The Rwandan courts

59. Unlike the International Tribunal, the Rwandan courts have barely begun trials of the persons suspected of genocide. They are still at the preparatory stage, which has undergone significant changes as a result of two major developments: the reconstitution of the judicial system and the adoption of special legislation relating to proceedings:

(i) The reconstitution of the judicial system

60. The reconstitution of the judicial system has compelled the Rwandan authorities to deal with those obstacles which, as already mentioned, prevent or delay the rehabilitation of the Rwandan judicial system. The progress made has led to the gradual removal of these three-fold obstacles: institutional, human and material.

(a) At the institutional level

61. The bodies that are essential for the organization and operation of the judicial system have been reconstituted.

62. The higher courts have not only been established, but have begun functioning. The Supreme Council of the Judiciary (CSM), in particular, began functioning on 15 April 1996. It gradually appointed judges and assigned them to the various courts, from the Supreme Court of Justice down to the district courts. At its May 1996 session, for example, the Council appointed 89 judges; at its session held from 14 to 16 September, it appointed 283 judges, 2 of whom were assigned to the Court of Appeal in Kigali and 1 to the Court of Appeal in Nyabinsindu; 116 judges were assigned to the various courts of first instance and 177 to the district courts.

63. The courts were functioning as follows at the end of September 1996: (a) of 147 district courts, only 20 or so were not functioning, as opposed

to 100 in January 1996; (b) of 12 courts of first instance, 11 were operational, or 5 more than in January 1996; and (c) of the 4 courts of appeal, 3 were functioning, or 3 more than in January 1996.

(b) Human resources

64. Considerable progress has also been achieved with regard to judicial personnel, thanks to the continual training provided. The Ministry of Justice has continued to provide accelerated training for the staff of the Public Prosecutor's Office, courts and registrar's offices.

65. Since this training began, 310 lay magistrates have been trained, 6 of whom are military personnel now assigned to the military courts. These judges were trained by the Canadian Voluntary Service Overseas (110), the Belgian Voluntary Service Overseas (110) and the "Reseau des Citoyens" (100).

66. Concerning the representatives of the law, 218 judicial police inspectors were trained in mid-March 1996 and 76 of them were selected to follow a training programme for prosecutors, while others are continuing their legal studies at the University of Butare. The Canadian Voluntary Service Overseas is training 150 more judicial police inspectors, with assistance from UNICEF. In addition, 900 gendarmes have followed a four-month training programme at the National Gendarmerie School at Ruhengeri and, in mid-March 1996, 750 communal police officers completed a four-month proficiency course at the Gishari Communal Police training centre. The following played a role in carrying out all these training programmes: several United Nations agencies (UNDP, Human Rights Field Operation in Rwanda, UNHCR and UNICEF), the European Union, several countries (Germany, Belgium, Canada, United States of America, Netherlands, Uganda, Sweden and Switzerland and some non-governmental organizations (Réseau des Citoyens and Jurists without Borders).

67. The progress achieved takes the form of an increase in personnel. From December 1995 to December 1996: (a) the number of judges rose from 387 to 448, or 61 more; (b) the number of prosecutors rose from 20 to 120, or 100 more; and (c) The number of registrars rose from 110 to 288, or 188 more.

68. There has, however, been a considerable drop in the number of judicial police inspectors, from 312 to 223. The reason for this 89-person decrease is that some judicial police inspectors have been assigned as officials of the Public Prosecutor's Office and others have been sent for training at the University of Butare Law Faculty.

69. The improvement in human resources must, however, be put into perspective and considered carefully, for two very simple reasons: (a) quantitatively, these figures are far short of needs, which are estimated, according to the revised plan of the Ministry of Justice, at 694 judges for "start-up" purposes alone, i.e. 151 too few; to have a general idea, one need only compare this figure with that of the 800 judges practising before the events of April 1994; and it must especially be borne in mind that these judges are being called on to try an astonishing number of prisoners (there were over 90,000 persons in the detention centres at 31 December 1996); (b) qualitatively, it is unfortunate that practically none of these judges are

jurists; of the 89 judges appointed in May 1996, only 20 or so, or less than one fourth, had received adequate legal training; over 75 per cent of the judges were trained on the job and, what is more, to hear cases of genocide, which is a serious and complex offence that carries the death penalty. This is illustrated by the first judgements handed down, especially by the court in Kibungo, which has already handed down two death sentences in proceedings that violated international standards by depriving the defendants of their right to be assisted by counsel.

70. As indicated in the preceding report (E/CN.4/1996/68, para. 51), the foreign judicial personnel aid project was not accepted by the Government of Rwanda for reasons relating to national sovereignty. The funds made available to UNDP under the assistance project for the rehabilitation of the legal system were thus used to pay bonuses ranging from $58 to $211 to 1,100 members of the Rwandan judiciary. Only six foreign jurists are currently working in the Ministry of Justice foreign personnel assistance programme. They were assigned to the courts of first instance in Butare, Cyangugu, Gikongoro, Gitarama, Kibungo and Kibuye, with the task of advising the presidents of the respective courts, the members of their prosecution departments and the judicial police inspectors assigned to them. It is now thought that their number should be increased to 10, rather than 50 as originally planned. The central administration of the Ministry of Justice, for its part, receives technical assistance from foreign consultants in the preparation, implementation and follow-up of projects, the coordination of international assistance and the translation of legislative texts. Among the countries represented are Germany, Belgium, Canada and the Netherlands and the donor agencies include UNDP, the European Union and the United Nations Centre for Human Rights.

(c) Material aspects

71. With assistance from the international community, the Government of Rwanda has proceeded to reconstruct buildings housing various courts and tribunals, provide the staff with means of transport (vehicles, mini-vans and motorcycles), purchase basic supplies (typewriters, photocopy machines, printers, office furniture, loose-leaf files, folders, cameras, etc.), publish copies of Rwandan codes and laws and set up judicial archives. In addition to efforts to rehabilitate the judicial system, Rwanda has enacted a special law relating to proceedings.

(ii) Act organizing proceedings against persons suspected of genocide

72. In his preceding report (E/CN.4/1996/68), the Special Rapporteur discussed two competing proposals made by the participants in the Conference on Genocide and Impunity, held at Kigali from 1 to 5 November 1995. The first proposal concerned the establishment of a special court, independent of the existing judicial system, to try the persons suspected of genocide, and the second the introduction within the existing courts of specialized chambers to try such cases. The second formula was the one retained by Act No. 8/96, adopted on 30 August 1996 by the Rwandan Parliament and declared constitutional by the Constitutional Court. Article 1 of the new Act stipulates, "there shall be established, within the courts of first instance and military courts, specialized chambers with exclusive competence to try the

offences referred to in article 1". This provision establishes the Rwandan courts' three areas of competence: Competence ratione materiae, ratione temporis and ratione personae.

(a) Competence ratione materiae

73. Ratione materiae, the specialized chambers are competent to try: (a) crimes of genocide or crimes against humanity as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and its Additional Protocols, and the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968, all three of which have been ratified by Rwanda; and (b) offences covered in the Penal Code, which the Public Prosecutor's Office alleges, or the defendant admits, were committed in connection with the events surrounding the genocide and crimes against humanity.

(b) Competence ratione temporis

74. Ratione temporis, the Rwandan courts are competent to try punishable acts which, pursuant to Act No. 8/96, were committed between 1 October 1990 and 31 December 1994. While maintaining the same dies ad quem as the one established in article 1 of Security Council resolution 955 (1994) of 8 November 1994, adopting the Statute of the International Criminal Tribunal for Rwanda, namely, the end of December 1994, this Act differs as to its dies a quo, the day from which the reprehensible acts fall within its scope. The dies a quo is set, not on 1 January 1994, but on 1 October 1990, the date of the outbreak of civil war in Rwanda. It should be noted that the Government of Rwanda had unsuccessfully attempted to persuade the Security Council to adopt that solution. The choice of the 1 October date, although preferred by the authorities because of its connection with the launching of the civil war by the RPF, has the advantage of better delimiting the acts in preparation of the genocide and other crimes against humanity committed in Rwanda from April 1994 onwards.

(c) Competence ratione personae

75. Ratione personae, the law covers, in principle, all alleged perpetrators of serious violations of human rights and international humanitarian law. Article 2 of the Act adapts this general principle to the punishment system by distinguishing four categories of perpetrators of reprehensible acts. In descending order, the first includes (but does not define): (a) the planners, organizers, instigators, supervisors and ringleaders of the crime of genocide and crimes against humanity; (b) persons who have committed, or encouraged others to commit, the above-mentioned crimes, in their capacity as national, prefectoral, communal, penitentiary, military, paramilitary (militia) or religious authorities; (c) persons who have systematically committed heinous acts of homicide; and (d) persons responsible for sexual abuse. The second category includes persons who have perpetrated or been accomplices to intentional homicides or serious assaults having caused the death of their victims. The third category includes persons who have committed criminal acts

or acts of criminal participation as part of other serious attacks against human beings. Lastly, the fourth category includes persons who have committed offences against property.

76. This classification has been used to establish a graduated scale of penalties, both principal penalties and accessory penalties. Persons in the first category are liable to the death penalty (art. 14). They cannot be granted the reduced penalties provided for under article 6, in the event of convictions handed down on the basis of a confession and guilty plea made before (art. 15) or after (art. 16) the proceedings. Under articles 6 and 14 together, persons in the second category are liable to life imprisonment, those in the third, to the prison terms established by the Penal Code and those in the fourth have only to pay civil damages in an out-of-court settlement or following civil or criminal judicial proceedings. However, persons in the second category, if they have confessed and pleaded guilty before the trial, are liable to 7 to 11 years' imprisonment and those in the third category, to a third of the sentence that would have normally been handed down by the court and, if they have confessed and pleaded guilty before the trial, to prison terms of 12 to 15 years and half of the penalty which the court should normally order, respectively. Where accessory penalties are concerned, persons in the first category are liable to perpetual and total civic dishonour, (obviously in cases where the death penalty is commuted to another penalty) and those in the second category to perpetual civic dishonour, as provided for in article 66, paragraphs 2, 3 and 5, of the Rwandan Penal Code, which stipulates, "Civic dishonour consists of the following: [...] 2. Removal of the right to vote, be elected or run for office, all civic and political rights in general, and the right to wear decorations; 3. Inability to testify as an expert witness or to testify in a court of law other than for the purpose of providing basic information; [...] 5. Removal of the right to bear firearms, the right to serve in the armed forces, to be a member of the police, to run a school, teach or be employed in any educational establishment as a teacher, instructor or supervisor".

77. With regard to compensation for damages, the Act provides that "The criminal responsibility of persons in category 1 as defined in article 2 entails joint and mutual civil responsibility for all damages caused in the country as a result of their acts of criminal participation, whatever the place where the offences were committed. Persons in categories 2, 3 and 4 are civilly liable for the criminal acts they have committed" (art. 30). Lastly, it should be mentioned that article 32 establishes a Compensation Fund for the genocide victims who have not yet been identified.

78. Beginning in October 1996, the Act has been the subject of an energetic explanatory and awareness-raising campaign directed at all sectors of the Rwandan population: the administration and the public, urban and rural sectors, judicial and prison personnel and detainees. It had even been planned to conduct the campaign in the refugee camps. On 25 November 1996, the Attorney-General of the Republic issued a provisional list of 1,946 persons suspected of genocide, all in the first category. The special courts, such as the one in Kibungo, have begun operating, like the ordinary courts, which had already been functioning for several months and trying ordinary civil and criminal cases, including current violations of human rights.

II. CURRENT VIOLATIONS OF HUMAN RIGHTS

79. Between the publication of the last report (E/CN.4/1996/68) and the fifty-second session of the Commission on Human Rights in March-April 1996, there was a slight improvement in the human rights situation, which was unfortunately offset by a fresh outbreak of violations in June, July and August, owing to the prevailing insecurity in the country during that period. The situation varies, however, according to whether the right to own property, the right to personal security, the right to freedom of expression, the right to physical integrity or the right to life is involved.

A. Violations of property rights

80. Violations of property rights, which are likely to worsen, have led the authorities to take a number of measures.

1. Risk that the situation will worsen

81. As indicated in the preceding reports, violations of property rights take the form of illegal occupation of property and lead to arbitrary arrests and detentions as a result of malicious accusations and to land disputes ending in murder.

82. It is true that there was a lull in such violations during the period covered by this report. Rwandan authorities currently estimate that 10 per cent of vacant property is the subject of disputes between old and new returnees. This downward trend was confirmed by the human rights observers, based on the low number of cases submitted to them or brought to their attention.

83. The problem might well worsen, however, and become complicated with the large-scale return of refugees. There is a severe lack of housing and arable land in the country and of the financial means to meet these needs. This situation is obviously due to the destruction caused by the hostilities of 1994, or even 1990, and consequently does not require any particular comments. Suffice it to say, by way of example, that two types of regions may have to bear a disproportionate burden of the large-scale return of refugees.

84. The first type consists of regions already having problems with land disputes. These are the major urban centres, such as Kigali, Gisenyi and Butare, but also a few rural areas, particularly Kibungo prefecture. According to the statistical data for housing reconstruction established by UNHCR in April 1996, there were 32,958 occupied houses in this prefecture and 45,872 hectares of occupied fields.

85. The second type of situation concerns regions which are not now affected by the problem of the illegal occupation of property, for lack of housing but are being called on to build or restore dwellings. In this case the problem is not solved, but simply displaced. A typical illustration is Byumba prefecture, where the houses were destroyed at the beginning of the hostilities in 1990. The commune of Cyumba alone, which already had 11,913 inhabitants for a surface area of nearly 73 km^2, received an influx of nearly 20,000 returnees in November-December 1996. The resulting overcrowding

contains the seeds of land disputes. It is easy to see why the authorities are anxious to take immediate measures to deal with the most urgent matters.

2. Measures by the government authorities

86. The measures taken or planned by the government authorities to put an end to the illegal occupation of property come down mainly to evicting illegal occupants and building dwellings for old refugees.

(a) Evicting the illegal occupants of property

87. To combat the illegal occupation of property more effectively, the Government has decided to entrust the management of vacant property to the burgomasters, who can rent it to the old returnees. When the latter occupy property, they are placed under an obligation to leave within 15 days from the date of the owners' return. But this is not an absolute rule. The parties concerned may derogate from it, either by reaching agreement on a longer time period or by drawing up a lease. Experience has shown that amicable solutions between parties are more effective than coercion by the authorities. Coercion would have only entailed drawbacks, of which we will mention only two:

(a) The first is the ineffectiveness of the use of force against "recalcitrants" who were either APR officials or supported by them, as the failure of the land dispute committee amply attests; (b) the second drawback is that evicting the occupants, on the assumption that this will break down their resistance, does not solve the problem, but merely displaces it. The State itself is under the obligation to provide housing to the people evicted, whom it cannot leave homeless in the street. It is for this reason that the authorities give priority to construction of dwellings.

(b) Construction of dwellings for old caseload returnees

88. The action undertaken by the Rwandan authorities is in fact quite complex. It aims not only at housing all returnees without exception, but also at providing them with arable land. It covers both the old and the new refugees, those of the diaspora from the 1994 genocide. It involves the restoration of damaged houses and property, the construction of dwellings and even making construction sites available. All State and local authorities are involved. In some cases, they act alone. In others, they are assisted by international governmental or non-governmental organizations. The Special Rapporteur visited two pilot projects, one in an urban area in Kicukiro (Kigali City) and another in a rural area, in Kibungo prefecture.

(i) Experience in the urban commune of kicukiro

89. The population of this commune was estimated at 85,000 inhabitants before the November 1996 repatriations. It has since increased to 90,000. This population lives in a territory of 34 k^2, for a density of 3,000 inhabitants per square kilometre. The burgomaster of Kicukiro reports that the problem of the illegal occupation of property has become a serious one in certain urbanized sectors of the commune, such as Gikondo and Kicukiro. The situation is different in outlying sectors such as Kagarama. It is true that African solidarity, strengthened by the awareness-raising campaign, initially

solved the problem of accommodation for many returnees. But this is only a temporary solution for many of them, who are waiting to recover what is rightfully theirs. Thus, the authorities in Kicukiro are planning to build 3,000 houses for the old refugees, provided that they move out of the dwellings they are now occupying. Other dwellings are also being planned for vulnerable people and for genocide victims. Six thousand dwellings are needed, which will require the purchase of nearly 300,000 sheets of corrugated iron, which is far beyond the capacity of the local, and even central, authorities. Despite the difficulties, the central authorities have already opened a site at Kaciru, where the construction of 2,500 dwellings is planned. The Ministry of Public Works is providing the returnees with building plots, while the commune is helping to produce the bricks which the beneficiaries are responsible for making.

(ii) Experience in Kibungo prefecture

90. Kibungo prefecture is more severely affected by the illegal occupation of property, with 27,000 cases. Land and real estate disputes are rare as yet because there was a very small number of refugees (4,000) until mid-December. Conflicts are likely to break out and to increase with the expected large-scale return of refugees from the United Republic of Tanzania. For this reason, efforts are focusing on the construction of new dwellings. Thirty-six sites have been chosen for this purpose. They have been attributed to non-governmental organizations which have been put in charge of building "villages" with assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR). The Lutheran World Federation has been assigned the task of resettling the returnees in certain communes in Kibungo and Gitarama prefectures.

91. The Federation's building programme began on 16 September 1996; its strategy consists of training groups of 20 people at the rate of one representative per family. These people will be divided into sub-groups of five and put in charge of building six houses, five for themselves and one for a vulnerable person designated by them. Each person receives a 600 m^2 plot and, not far from his "village", 2 hectares for crop-raising. Thus, 500 houses are expected to be built on the Bukara ranch under this programme, at a rate of 125 per sector. The 410 people building the houses are not paid, but they receive food from the Lutheran World Federation and the World Food Programme. UNHCR is financing the project and supplying material such as lumber and corrugated iron and is meeting the costs of the carpenters and other technicians, as well as those of the other infrastructures (schools, markets, dispensaries, etc.). These dwellings are intended solely for the old refugees, to encourage them to leave the "new" refugees' homes which they are occupying. This solution is no doubt a useful one for settling the problem of illegal occupation of property, but it does involve the risk of establishing "Tutsilands" inside the areas in question.

B. Violations of freedom of expression

92. Violations of freedom of expression take the form of censure, intimidation and even violations of physical integrity (beatings with clubs, aggravated assault, etc.), kidnappings and murders of individuals who belong to professional categories with the common feature of being able to express

their opinions orally or in writing and who take the risk of practising their profession with complete independence. These violations are aimed in particular at journalists, the religious community, judges and human rights workers.

1. Journalists

93. Because they express themselves freely and provide objective information that departs from the Government's guidelines, several journalists have been called enemies of the people and subjected to intimidation and threats. Some have been arrested, others, fearing for their lives, have gone into exile and still others have been abducted or reported disappeared. The Special Rapporteur's last report (E/CN.4/1996/68) mentioned the attack on journalist Edouard Mutsinzi and the disappearance of Mr. Manasse Mugabe of UNAMIR radio.

94. Reference should also be made to the arrest on 29 March 1996 of Mr. Joseph Ruyenzi of Radio Rwanda and the ill-treatment to which he was subjected. He was arrested on charges of raping and mutilating a woman. Consistent and reliable testimony gathered by the observers indicates that the charges were merely a pretext for the arrest. The journalist, who had been working for the national radio station for one and a half years, was known for providing information on violations of human rights in Rwanda.

2. Judges

95. The freedom of expression of some judges has been violated and such violations particularly impede their ability to perform their functions independently.

96. Some judges and prosecutors have been suspended, apparently for failing to obey orders by the authorities or for taking decisions that were not to the authorities' liking. One such case was the suspension by the Council of Ministers, on 27 February 1996, of the President of the Court of First Instance in Kigali, Mr. Jean-Claudien Gatera. Mr. Gatera was demoted to ordinary judge by the Supreme Council of the Judiciary on 28 May. A similar case was the suspension of Mr. Fidèle Makombe, the Kibuye prosecutor. The measure was taken as a result of a disagreement between Mr. Makombe and the civil and military authorities of the prefecture about the distribution of their respective areas of competence. The fact that Radio France International interviewed Mr. Makombe and then covered the event was probably an aggravating circumstance.

97. Other judges have been arrested on charges that they participated in genocide, whereas they had obviously not done anything of the kind and the real grievance against them was their decision to release detainees. An example is the arrest on 2 May 1995 of the Butare prosecutor, Mr. Célestin Kayibanda.

98. Still other judges have been murdered. The most recent case is that of the assistant prosecutor in Rushashi, who was killed on 7 July together with the burgomaster of the commune of Rushashi, the director of a primary school

and several other persons, including women and children. The authorities blamed the events on infiltrators, but testimony gathered by human rights observers tends to attribute responsibility to APR members.

3. The religious community

99. As indicated earlier (E/CN.4/1996/68), relations between the new Rwandan authorities and certain religious denominations are not looking rosy. This is particularly true of the Catholic Church, in view of the privileged relations of some members of its hierarchy with dignitaries of the former Government.

100. The current clash between State and Church relates to the fact that several buildings where massacres occurred are being turned into genocide memorial museums. Fifty churches have thus been chosen by the State to be commemorative monuments and regular services have been prohibited. Such a decision is obviously contrary to the religious aspect of freedom of expression, i.e. freedom of worship.

101. This conflict appears to have been settled successfully, thanks to efforts by the Joint Catholic Church-State Commission, whose members were able to reach an agreement. Under the agreement, the churches scheduled to become commemorative monuments in the first category "will keep their cultural function for the congregation's sake and in order to teach our Christians the value of memory" (letter from the Episcopal Conference of Rwanda to the Rwandan Government).

4. Human rights workers

102. Human rights activists continue to be harassed by certain authorities, the official media and APR soldiers. They are accused of being in league with the militia members, just as the former Government accused them of being inside accomplices of the RPF. Referring to them, one journalist did not hesitate to say: "Those who were not in favour of the Government's action were enemies of the nation".

103. Some human rights activists belonging to the Collective of Human Rights Leagues and Associations (CLADHO) have been threatened, mainly by telephone, in connection with their activities for the promotion and protection of human rights. Others have been arrested for no reason, as was the case of Mr. Jean-Baptiste Barambirwa, Present of CLADHO. Mr. Barambirwa was arrested in December 1995, after declaring the closure of "Justice week in Rwanda" at the Hotel Diplomate in Kigali. More recently, it was the turn of Mr. Jean-Pierre Bichamumpaka, treasurer of the independent newspaper Kinyamateka, edited by a human rights activist, to be arrested on 16 July 1996. He was first taken to the gendarmerie in Kacyiru and then moved to Remera police headquarters, where he is allegedly still being held. He is charged with participating in the massacres of the Bagogwe in 1992. But there is every indication that he is being harassed because of his work for this newspaper, which is known for its efforts on behalf of the protection of human rights.

C. Violations of the right to personal security

104. Despite a period of relative calm, violations of the right to personal security continue to be disturbing, given the Government's determination to enact emergency measures at all costs. After the failure of the attempt to suspend the right to personal security through the Act of 9 June 1995, which was censured by the Constitutional Council on 26 July 1995, on 8 September 1996 the Rwandan Parliament adopted Act No. 9/96, containing provisional amendments to the Code of Criminal Procedure. The Act suspends the fundamental guarantees granted to convicted prisoners, thereby confirming the practice of arbitrary arrests and detentions.

1. Suspension of fundamental guarantees through Act No. 9/96 of 8 September 1996

105. Act No. 9/96 of 8 September 1996, which was declared constitutional by the Constitutional Court, contains emergency measures that are not consistent with international standards.

(a) Emergency measures

106. The emergency measures enacted consist of the retroactive application of the law, through the extension of detention periods and, in some cases, the elimination of the right of appeal.

(i) Retroactivity of the Act

107. The Act's exploratory statement *in fine* reads as follows:

> "Pursuant to these principles, the Act establishes the indispensable provisional measures to be taken with regard to arrest, pre-trial detention and maintenance of pre-trial detention. These measures shall enter into force on 6 April 1994."

108. This provision derogates from the principle of the non-retroactivity of the law in that it makes the new Act effective as of 6 April 1994, i.e. the beginning of the massacres. It thus tends to legalize the practice of arbitrary arrests and detentions. In the operative part of the Act, retroactivity applies to detention periods.

(ii) Extension of detention periods and absence of the right of appeal

109. The Code of Criminal Procedure in application before the amendments came into force provided that a report was to be issued whenever a person was arrested. The report was valid for 48 hours (art. 4). Under articles 37 and 38, it was for the official of the Public Prosecutor's Office to issue an arrest warrant on arrest or on transfer of the file by the judicial police inspector. Within five days after the Public Prosecutor's Office had drawn up and issued the arrest warrant, the judge had to issue a pre-trail detention or release order (art. 38). In the event of detention, the order was valid for a period of 30 days (art. 41). A person arrested after having been released had the right to appeal the decision (art. 44). He or she also had the right to

appeal a detention order (art. 46) and to appeal the pre-trial detention decision handed down by the court in a formal hearing (arts. 55 and 56).

110. Articles 1, 2 and 3 of the new Act establish three categories of persons arrested or detained:

> "1. The first consists of persons who are already in prison when the new Act is published and brought into operation. Considering that the judicial system is gradually being reorganized, but that much remains to be done, sufficient time should be allowed for drawing up an arrest report and issuing an arrest warrant and a pre-trial detention order for all detainees. A period of over 18 months, to expire at the end of next year, is a reasonable deadline. The duration of the validity of the pre-trial detention order is raised from 30 days to 6 months. The right of appeal is eliminated (art. 6).
>
> 2. The second category includes persons who will be arrested after the publication of the law and before the end of next year. Without going so far as to extend detention periods as in paragraph 1 above, the situation makes it necessary to lengthen them as follows:
>
> The arrest report must be drawn up within one month following the arrest (as opposed to 48 hours);
>
> The official of the Public Prosecutor's Office may take up to four months following the arrest to issue an arrest warrant;
>
> The pre-trial detention order must be issued within three months following the arrest order (as opposed to five days);
>
> The duration of the validity of the order is increased from 30 days to 6 months.
>
> As in the preceding category, the possibility of appeal is eliminated.
>
> 3. Lastly, as from 1 January 1998, it will be possible to shorten the detention periods set in paragraph 2, but without reverting to those provided for in the Code of Criminal Procedure. A new period has been set, to end with the transition period on 16 July 1999, during which the detention periods will be as follows:
>
> The judicial police inspector must draw up the arrest report within five days;
>
> The arrest report must be issued within two months following the arrest;
>
> The pre-trial detention order must be handed down within two months after the arrest warrant is issued;
>
> The pre-trial detention order will be valid for three months.
>
> The Act also contains certain procedural provisions:

The judge ruling on pre-trial detention is not necessarily the President of the Court, but a judge designated by him;

The period within which the judge must hand down his decision is raised from 24 hours to 15 days;

The right of appeal is eliminated."

(b) Failure to meet international standards

111. The Rwandan Government invokes article 4 of the International Covenant on Civil and Political Rights to establish a legal basis for these emergency measures. The reference to the Covenant is quite explicit. The explanatory statement to the Act reads as follows: "Considering that, since 6 April 1994, the Rwandese Republic has been experiencing a public emergency which threatens the life of the nation, within the meaning of article 4, paragraph 1, of the International Covenant on Civil and Political Rights ...". This situation, it is explained, is primarily one of overcrowding in prisons, the powerlessness of the judicial system and the perpetuation of the impunity caused by the absence or slowness of criminal proceedings against the persons suspected of genocide.

112. The interpretation of article 4 of the Covenant is not accurate because a partial approach has been taken. Recourse to the derogation clause in article 4 is authorized only "In time of public emergency which threatens the life of the nation" and "the existence of which is officially proclaimed". In addition, the measures in question must be taken only "to the extent strictly required by the exigencies of the situation" and must be consistent with other international obligations. The above-mentioned conditions do not appear to have been met in the case under consideration. It is of course true that the powerlessness of the judicial system to cope with overcrowding in prisons is a public emergency which required the Rwandan Government to enact emergency legislation to remedy the situation. That solution might have been necessary until early 1995, but, at present, it is not materially impossible to respect certain forms and procedures of criminal legislation to the point of endangering the fundamental rights of individuals, particularly detainees. The derogation clause cannot, in these conditions be applied. Moreover, a fairly restrictive interpretation is found in international case law and doctrine, which cite as examples of danger a situation of war or internal disturbance officially proclaimed by a state of siege or state of emergency. They require that the measures taken should be temporary, that the other States parties to the Convention should be informed and that the measures should not impair fundamental human rights (see Judgement of the European Court of Human Rights in the Greek Case of 1967). One author, writing on article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, whose wording is similar to that of article 4 of the Covenant, says the following:

"The right of derogation authorizes only certain clauses of the Convention to be suspended and leaves intact the fundamental principles of rule of law: the suspension of certain liberties does not mean that the rule of law is put on stand-by. The spirit, if not the letter, of article 15 excludes the total suspension of certain rights, such as

individual freedom or the right to a fair trial, whatever the pressure of circumstances. The importance of the obligation to respect the other obligations under international law cannot be underestimated in this regard" (R. Ergec, Les droits de l'homme à l'épreuve des circonstances exceptionnelles, study on article 15 of the European Convention on Human Rights, Brussels, Bruylant, 1987, pp. 391 and 393).

113. The new Act is thus prejudicial to several fundamental rights granted to persons who have been arrested or detained. First of all, it violates the principle of the non-retroactivity of criminal law (and criminal procedure), according to which no one may be arrested, detained, prosecuted or convicted except in the cases and according to the forms specified by a law which entered into force before the commission of the offence. Article 15 paragraph 1, of the Covenant establishes this principle as follows: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".

114. The new Act also introduces discrimination in the treatment of persons being prosecuted for the same acts. It thus violates the principle of equality before the courts, embodied in and guaranteed by article 14 of the Covenant, and its corollary, the principle of non-discrimination.

115. Lastly, the Act eliminates a fundamental guarantee of judicial procedure, namely, the right of appeal, whereas article 2, paragraph 3 (b), of the Covenant stipulates that "Each State party to the present Covenant undertakes: [...] To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy".

116. The extension of the time limits for the various procedures and, consequently, the lengthening of detention periods are also contrary to the right to a fair trial, which entails, inter alia, the right to be tried without undue delay. Article 9, paragraph 3, of the Covenant stipulates: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release". Paragraph 4 states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

117. The reasons underlying this reform (prison overcrowding), material impossibility of dealing with cases according to the normal procedure, etc.) cannot justify the questioning of principles and rights so fundamental as those that have just been analysed. They also tend to encourage arbitrary arrests and detentions.

2. Continuing arbitrary arrests and detentions

118. As indicated earlier, there has been a period of relative calm in violations of the right to personal security, which take the form of arbitrary arrests and detentions. Nevertheless, two periods of political tension have caused a fresh upsurge of arrests. The first was the April-May 1996 census period, which ended in a veritable witchhunt for the perpetrators of the genocide, and the second, the searches to find and arrest infiltrators in July and August.

119. This situation has worsened the deplorable conditions of detention, which are characterized by prison overcrowding and inhuman treatment.

(a) Overcrowding in prisons

120. In the preceding report (E/CN.4/1996/68), the Special Rapporteur drew attention to a relative improvement in conditions of detention in some prisons as a result of the construction of the Nsinda centre, the expansion of the Gitarama prison, the renovation of other centres and the transfer of detainees from overcrowded centres to less crowded ones. Efforts were also made to separate juveniles from adults.

121. Despite the authorities' efforts to relieve congestion, Rwandan detention centres are still overcrowded and conditions in some centres continue to worsen. The prison population has kept increasing. On 31 May 1996, it was estimated at 51,006 detainees in the 14 main prisons. This figure rose on 31 October 1996 to 56,876, to which must be added persons detained in communal jails and gendarmerie stations, thus bringing the total prison population of Rwanda to 86,819 detainees on 30 November 1996. The increases that have been recorded may be explained by the above-mentioned political tensions and the large-scale return of refugees. The increase is even greater from one year to the next. From 31 December 1995 to 31 December 1996, the prison population rose from 49,185 detainees to over 90,000 i.e. nearly twice as many.

122. The number of detainees in 1996 was, however, not as great as in 1995. It went from 49,185, with an average of 4,098 per month, to 90,000, or nearly 40,000 more, with an average of nearly 3,400 per month. The relative slowdown in arrests is the result of overcrowding in existing centres, which made the authorities realize that other detainees could not be crowded in and led them to recommend the suspension of large-scale arrests.

123. Rwandan prisons and detention centres are all more or less equally overcrowded. The difference thus lies not in the type, but in the degree, of overcrowding. Prisons are not differentiated according to whether they are more or less populated, but, rather, according to whether or not they are more overcrowded or, more accurately, according to whether their numbers have remained stable or increased sharply. In the first case of relative stability, reference may be made, by way of example, to the Ruhengeri prison, with 2,319 detainees on 31 November 1996, as against 1,550 on 31 November 1995, or 30 per cent more, and the Kigali City prison, with 14,478 detainees on 30 November 1996, as against 10,683 on 31 December 1995, or 30 per cent more. In the second case, which includes already overcrowded

centres that have received new detainees, the Butare prison, with a capacity of 1,200 detainees, housed 9,346 on 30 November 1995 and 17,537 on 30 November 1996, i.e. more than twice as many; the Gikongoro prison, which had 1,439 detainees on 30 December 1995 and 3,356 on 30 November 1996, or twice as many; and the Kibuye prison, where 2,431 persons were detained on 30 November 1995 and 7,022 were being held on 30 November 1996, i.e. three times as many. Such conditions of detention are in themselves inhuman treatment.

(b) Inhuman treatment

124. Prison overcrowding is the cause of many illnesses, which may result in death. The July 1996 Monthly Situation Report by the United Nations Department of Humanitarian Affairs describes the health situation as follows:

> "The most common reported illnesses continued to be malaria, dysentery and respiratory diseases, often linked to HIV infection. Overcrowding and lack of water for washing caused skin diseases, particularly reported in local detention centres of Kigali Rural and Kibungo Prefectures. The dry season exacerbated the problem of water shortages. The central prison of Kibungo was without water for three days until ICRC trucks began deliveries. Communal detention centres also suffered from water shortages. Thirty-one detainees died of illnesses including tuberculosis, dysentery and malaria in July. Eight women died in the Juru sectoral detention centre, Gashora Commune, Kigali Rural Prefecture, on 20-21 July, reportedly from poisoning by unknown perpetrators" (Department of Humanitarian Affairs, Rwanda. Humanitarian Situation Report, 26 August 1996).

125. In addition to these deplorable conditions of detention, many cases of ill-treatment have been reported in most detention centres. The new forms of cruel, inhuman and degrading treatment described in the preceding report (E/CN.4/1996/68, para. 93) are spreading. This is particularly true of the rape of detainees, denial of food and detention in the "amigos", which are cramped, unwholesome and dark. In several cases, such treatment has led to the death of the victims. Detainees in the prisons of Butare, Byumba, Gikondo, Gikongoro, Gitarama, Kigali and Nsinda thus complained of receiving inadequate food rations. The persons responsible for such ill-treatment are mainly soldiers and prison guards. Some of these detention centres stand out because of the atrociousness of the acts committed in them. One example is the Nyamirambo station, where juveniles were tortured.

126. Such ill-treatment has probably been the reason for many attempts by detainees to escape, most of which have ended in death. The most spectacular and tragic case was the attack by infiltrators to "release" the persons detained in the Bugarama communal prison in May 1996, in which 47 persons died.

D. Violations of the rights to physical integrity and to life

127. Violations of the rights to physical integrity and life, which had slowed down somewhat during 1996, started up again in June 1996, and were committed both by infiltrators and by APR elements.

128. Persons who have infiltrated from neighbouring States, particularly Zaire, have committed reprehensible acts, such as sabotage and murders in prefectures located in western Rwanda, as well as mine laying, which makes it dangerous to move about in some places.

129. The APR response was just as brutal. It even assumed alarming proportions, involving searches followed by raids, kidnappings, summary executions and even massacres. For example, in July 1996, APR elements carried out several search operations which, according to human rights observers, resulted in the massacre of 182 persons. These massacres were carried out mainly in Gisenyi, Ruhengeri and Kibuye prefectures. Five large-scale search operations were conducted in the following communes: Rushashi in Rural Kigali prefecture (2 July); Karago in Gisenyi prefecture (9 and 10 July); Giciye, in the same prefecture, and Nyamutera in Ruhengeri prefecture, on the same dates; Ramba, in Gisenyi prefecture, on 13 July; Giciye, Gaseke and Karago again on 23, 24 and 25 July; and Rutsiro in Kibuye prefecture on 25 July.

130. The incidents which took place on 9 July 1996 may give some idea of how these operations were carried out and the extent of the massacres. The above-mentioned sectors were cordoned off by soldiers. APR elements rounded up adult men and took them to Jomba marketplace, after they spent some time on the Vunga football pitch. According to witnesses, they assembled about 3,000 persons. They asked them to denounce the infiltrators, pretended to release them and, as they were returning home, killed or abducted many of them. The human rights observers who reported the incidents estimate that 99 persons were killed and 50 abducted.

131. The number was even higher in August 1996, when the Rwanda human rights operation reported that 130 persons had been killed in Gisenyi prefecture and over 100 had been killed in Ruhengeri prefecture. These massacres were committed by way of reprisals against the infiltrators, to whom the summary executions of 40 persons in that prefecture were attributed, according to the Gisenyi observer team.

132. The conflict between the APR and the infiltrators, which created a situation of insecurity along the borders with Zaire, moved over into that country, thus changing the basic components of the problem of the return of refugees.

III. THE PROBLEM OF THE RETURN OF REFUGEES

133. A durable solution to the problem of the return of Rwandan refugees, an ongoing concern of the international community, has eluded UNHCR, the OAU and the States of the Great Lakes region, despite the considerable efforts that they have made. The Rwandan refugee crisis has become increasingly more complicated and has degenerated into an armed conflict that threatens the security and stability of the Great Lakes region and involves the risk of causing an "implosion".

134. The truth is that the continued presence of Rwandan refugees in neighbouring countries has put all of UNHCR's strategies to the test and has created what is called the "eastern Zaire crisis".

A. Consequences of the continued presence of Rwandan refugees in neighbouring countries

135. The continued presence of Rwandan refugees in neighbouring countries has had a number of serious, closely linked consequences of several kinds: humanitarian (suffering endured), economic (depleted humanitarian assistance), political and strategic (interests of States), ecological (destruction of host States' ecosystems) and security (military and paramilitary activities of former FAR and militia members, as well as border insecurity). Security, in its subregional dimension, seems to be taking the lead over the other consequences. It primarily takes the form of worsening trans-border inter-ethnic conflicts, as reflected in interference by the presence of refugees in local inter-ethnic conflicts and their incursions into Rwanda.

1. Interference of the Rwandan refugee presence in local inter-ethnic conflicts

136. Because they have the same ethnic background as the populations of the host territories, the Rwandan refugees are involved in local inter-ethnic conflicts whether they like it or not. They are the victims of inter-ethnic conflicts in Burundi and both actors and victims in Zaire.

(a) Rwandan refugee victims of the conflicts in Burundi

137. Following the renewed outbreak of fighting between Hutus and Tutsis in Burundi, the Rwandan refugee camps have been the target of attacks by government troops and Tutsi militias. In his last report (E/CN.4/1996/68), the Special Rapporteur had already drawn attention to the attack by the latter against the Mugano refugee camp in northern Burundi, which led to the exodus of 17,000 refugees to the United Republic of Tanzania in January 1995. Since Tanzania had already decided to close its borders, UNHCR managed to set up another camp. On the basis of a decision by the Government of Burundi in July 1996, however, the Rwandan refugee camps were closed and the refugees were forced to leave the host country. Those expulsions were followed by the spontaneous return of thousands of other refugees, who were probably afraid that they would face the same fate.

138. Between 19 and 23 July, over 15,000 refugees were thus expelled from the camps in Ngozi province. Most of the persons expelled were taken to their home communes in Butare prefecture on 26 July. According to UNHCR, 61,744 refugees subsequently voluntarily left the camps located in Ngozi and Kirundo provinces, as did over 50,000 from the Magara camp in Ngozi province and more than 9,800 from Rukuramgabo camp. By late August 1996, all the Rwandan refugee camps in Burundi had been closed.

139. When the returnees arrived in the transit camps, they were received by APR soldiers and subjected to "searches" and "screening" in an attempt to find persons suspected of genocide and infiltrators. The searches led to the arrest of 366 refugees returning from Burundi. The ratio between the number of returnees and the number of persons arrested is as follows: nearly 15,000 entries and 366 arrests, i.e. 0.5 per cent of the total. It should be noted that, among the persons arrested, there were more voluntary returnees

than persons who had been expelled. Of the 366 persons, 98 had been expelled and 268 were voluntary returnees, i.e. nearly 70 per cent of the total. It should also be noted that former local authorities were arrested, including three burgomasters and two police officers. All were accused of having taken part in the genocide.

(b) Rwandan refugees as actors in or victims of the conflicts in Zaire

140. Unlike Burundi, where Rwandan refugees are victims, since they are being forced to leave the country of asylum, some persons believe that, in Zaire, they are actors or, more specifically, that they are involved in the conflict (case of militia and former FAR members), while others, particularly many genuine refugees, regard them as hostages and victims of the crisis that has recently developed in Zaire. The situation in the Kivu region was very alarming at the time because it had been greatly complicated by a combination of three basic factors.

141. The first factor is the exacerbation of inter-ethnic rivalries dating from before the 1993 Burundi and 1994 Rwandan conflicts. Kivu had already been the scene of very complex inter-ethnic fighting between, on the one hand, the so-called indigenous populations (Nyanga, Hunde, Bembe, Shi, etc.) and the so-called alien populations, commonly known as Banyarwanda, who arrived as a result of successive migratory flows, and, on the other hand, between Tutsis and Hutus, ethnic groups which both belong to the Banyarwanda. The events which took place in Burundi in 1993 and in Rwanda in 1994 thus sharpened the inter-ethnic rivalries between the two enemy brothers and made them fight even harder in their struggle for power.

142. A second factor is that the Rwandan conflict moved over into Zaire following the large-scale arrival of Hutu refugees in that country, first in Northern Kivu and then in Southern Kivu. The no less large-scale return of Tutsis to Rwanda made it clear not only that new inter-ethnic rivalries took precedence over old ones, but also that the newcomers, i.e. the former masters of Kigali and their subordinates, particularly the Interahamwe and former FAR members, "dominated". They in fact had the benefit of an entire military arsenal and the collaboration of the Virunga Farmers and Herders Association (MAGRIVI). The militias thus sowed terror both inside the camps and outside, especially against the local Zairian population. This is why the Special Rapporteur on the situation of human rights in Zaire attributes responsibility for the violence to them, stating that: "The Hutu militia known as the Interahamwe have been the main instigators of violence" (E/CN.4/1997/Add.1, para. 38).

143. The third factor is that the inter-ethnic Hutu-Tutsi conflict spread to other ethnic groups, thus complicating and further aggravating the situation. The Special Rapporteur on the situation of human rights in Zaire goes into great detail in giving examples of the acts of violence committed in 1995 and 1996 by the Interahamwe and MAGRIVI against the Zairian Tutsis and other local populations, with large losses of human life (E/CN.4/1997/6/Add.1, para. 40, and Human Rights Watch/Africa and International Federation of Human Rights Leagues, Zaire: forcés de fuir. Violences contre les Tutsis au Zaïre, New York/Paris, July 1996). The author places so much emphasis on this matter that we have to refer to it. It will, however, simply be pointed out that the

situation is further complicated by the barely concealed wish of the local authorities to expel Zairians, particularly indigenous or Rwandan-language Tutsis. The only alternative they appear to have is "the choice between expulsion and death" (E/CN.4/1997/6/Add.1, para. 68). Those who opted for expulsion or who were refoulés - which came down to the same thing - were in an unusual position similar to statelessness: for the Zairians, they were "Rwandans returning home" and, for the Rwandans, "Zairian refugees in Rwanda". This solution suited the Hutu extremists who had helped achieve it, probably for fear that the Tutsis might bring in outside support for the Rwandan Government or betray them in the event of an attack against Rwanda.

2. Incursions by refugees against the Rwandan Government

144. The continuing presence of Rwandan refugees near Rwandan borders is a constant source of insecurity and tension. The incursions are a matter of concern both because of the forms they take and because of the reactions to which they give rise.

(a) Forms of the incursion

145. The incursions by former FAR and militia members into Rwandan territory from Zaire take two forms: infiltrations and mine laying.

(i) Infiltrations

146. Starting in June 1996, several attacks by infiltrators were committed in prefectures in western Rwanda, causing large numbers of victims. Of 53 persons killed in June, 49 died during 3 large-scale operations conducted jointly by former FAR and militia members in Gisenyi, Kibuye and Rural Kigali prefectures. The first took place in the commune of Rwamatamu, in Kibuye prefecture, during the night of 18 to 19 June, when a group of 40 to 50 infiltrators from Ijwi Island in Zaire attacked a village located in Bunyamanza district in southern Kibuye prefecture, near Lake Kivu. This attack killed 14 persons, including an APR soldier. On 24 June, another group of about 10 unidentified persons attacked 3 houses in Nyabitare district in the commune of Rwamatamu (Rural Kigali prefecture), killing about 10 persons, including 2 elderly persons and 2 children. On 27 June, still another group of 30 armed persons carried out attacks lasting nearly two hours in the districts of Kiruma, Muremure and Kinihira in Gisenyi prefecture, killing 28 persons with machetes and grenades.

147. In July, the observers received information on other attacks resulting from infiltrations. On 17 July, for example, 6 militiamen attacked a dwelling in Gatyazo district in Cyangugu prefecture, killing 1 person, the 6 other occupants having managed to flee. In the night of 18 to 19 July, 10 persons were killed by a group of 30 to 40 infiltrators in Butare district in south-western Gisenyi prefecture. On 16 July, a group of seven unidentified persons murdered the sectoral adviser, together with his wife and his sister-in-law, in Kibuye prefecture. On 19 July, an Electrogaz official and his wife were shot in Marebe district in Cyangugu prefecture by infiltrators apparently belonging to the Interahamwe militias. Other more or less large-scale attacks were also reported in Gikongoro, Kibungo, Ruhengeri, Byumba, Rural Kigali and Gitarama prefectures. In addition to these

infiltrations in July, others took place in August, with the most significant occurring in Gisenyi and Ruhengeri prefectures, as stated above. The infiltrations were also used for mine laying.

(ii) Mine laying

148. Mine laying increased as of April 1996 and has taken place mainly in the prefectures bordering on Zaire. The most serious incidents, involving mine explosions, occurred in Cyangugu prefecture, specifically in the Mubano sector on 14 April and in Cymbogo on 20 April. During these incidents, two APR vehicles blew up on contact with mines, killing two persons and wounding several. In Bugerama on 20 April, a mini-bus hit an anti-personnel mine, killing five persons. Other mine-related incidents were reported in Gisenyi prefecture. On 15 April, a vehicle belonging to a non-governmental organization hit and set off a mine in the Kora sector in the commune of Mutura. In Ruhengeri prefecture, two similar incidents also took place on 8 March in Cyabingo and on 14 March in Kinigi.

(b) Consequences

149. As a result of these incidents, there has been a cut-back in the activities of humanitarian organizations and United Nations agencies, including the Human Rights Field Operation in Rwanda, which took security measures prohibiting its observers from driving on unpaved roads, which are particularly well suited to mine laying. Incidents involving mine explosions nevertheless dropped off as of June, probably because of the strengthening of security measures by the APR. In June, it increased the number of patrols and began to conduct searches in the hills and communes to find infiltrators, as noted above. The conflict between the APR and the infiltrators completely called into question UNHCR's strategies.

B. Failure of the strategies of the Office of the United Nations High Commissioner for Refugees

150. After the failure of two diplomatic attempts to settle the Rwandan refugee crisis at the Cairo (29-30 November 1995) and Tunis (18-19 March 1996) Conferences, organized under the auspices of the Carter Center in Atlanta, UNHCR adopted two sets of strategies. The first, which was to be selective, ended in failure and the second, which was new and was based on a comprehensive approach, also did not survive the crisis in Zaire.

1. The "selective" strategies

151. In order to deal with the obstruction of the Rwandan refugees' return, which was caused primarily by acts of intimidation in the camps, UNHCR adopted measures at the end of 1995, in cooperation with the host countries concerned, that turned out to be inadequate. Some were aimed directly at the intimidators, while others were designed to promote repatriation.

(a) Measures aimed at the intimidators

152. These measures were designed to separate the intimidators from the other refugees in order to enable the latter to decide freely whether or not they wanted to return to Rwanda.

153. Intimidators are refugees in the camps who spread propaganda for the non-return of refugees and/or exert physical or psychological pressure on them to force them to give up the idea of returning to Rwanda. The intimidators come mainly from the ranks of former FAR and militia members and persons linked to the former regime. According to an Amnesty International report (AFR/EFAI/2 January 1996), the intimidators operate mainly by means of tracts. One tract, distributed in the Mugunga camp in September 1995 and translated from Kinyarwanda, stated:

> "Of all those that UNHCR repatriated, not one is still alive ... The Tutsi have taken over the Hutus' belongings and those who dare speak out are massacred mercilessly ... UNHCR wants to repatriate the refugees as it usually does, illegally, knowing full well that they will be killed. Dear brother, we know you have problems, but suicide is no solution. Candidates for death can go home. They have been warned."

154. At the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region held in Nairobi on 7 January 1995, it was decided that persons suspected of genocide and intimidators should be separated from genuine refugees. That strategy was integrated into the Plan of Action adopted by the Bujumbura Regional Conference on Refugees and Displaced Persons in the Great Lakes Region, held in February 1995. On the spot, however, it turned out to be difficult, if not impossible, to identify the persons covered by these categories. Moreover, even if it had been possible to identify them, their separation or removal from the camps would have been dangerous. Thus, when the Zairian authorities arrested 12 refugees regarded as intimidators in the Mugunga camp on the basis of a list drawn up and provided by UNHCR, the refugees in the camp became aggressive towards UNHCR officials, going as far as to threaten them during the attempted census they had wanted to conduct.

155. The planned measures against the intimidators generally did not yield the expected results. Only a few dozen intimidators were arrested out of the tens of thousands operating in the camps. From mid-December 1995, when the implementation of these measures began in Zaire, until May 1996, UNHCR reported the arrests of 34 intimidators. The number was hardly more than 41 in September 1996, according to the latest report of the Special Rapporteur for Zaire (E/CN.4/1997/6/Add.1). The failure of the strategy of removing the intimidators from the camps forced UNHCR to consider other measures to encourage the repatriation of Rwandan refugees.

(b) Measure to encourage repatriation

156. These measures, which relate mainly to information campaigns for repatriation, are either incentives or deterrents.

(i) Incentives

157. As part of its policy to encourage the voluntary repatriation of Rwandan refugees, UNHCR set up video information centres in March 1996 containing information on possibilities of assistance for returning to Rwanda. A document prepared by the UNHCR Public Information Section goes into considerable detail about the possibilities available to the refugees: "Five centres - named Ogata, Mandela, Nyerere, Martin Luther King and Gandhi - were inaugurated at Kibumba camp in the Goma region. Each of the centres - tarpaulin over wooden frames built for 300-400 people - is equipped with televideos, radios and public address systems. The project involves plans for 16 such centres in the Goma camps and others in the Bukavu and Uvira regions. On the whole, the films shown about life in several prefectures in Rwanda have been well received by the refugees, who come from these prefectures".

158. It must, however, be recognized that the strategy of visits organized by UNHCR in and to the camps has not yielded the expected results. Mistakes have sometimes been made that have not made UNHCR's task any easier. For example, one of the two refugees taken to Rwanda by UNHCR to check out the situation was arrested in May 1996, as soon as he arrived in his home commune, on charges of having taken part in the genocide. Such an incident could only have had a negative impact on the programme of incentives to return. Following this new failure, UNHCR undertook to implement deterrent measures.

(ii) Deterrent measures

159. These measures are intended to set up obstacles to the ongoing presence of refugees in the camps. As is known, most of the refugees have set up survival structures which are both commercial (restaurants, shops, transport, etc.) and social (schools, dispensaries, etc.). Some of these activities offer obvious advantages, if only because they reduce food and financial dependence and eliminate idleness, which leads to crime. However, as these activities prosper, they encourage the refugees to stay in the camps instead of returning to Rwanda. In order to remedy this situation, UNHCR undertook to dismantle these structures and decided to close the schools and shops operating in the camps. It also decided to reduce the daily food ration given to each refugee, lowering it from 2,000 to 1,500 calories.

160. These measures were not well received by the refugees and by a number of humanitarian organizations. The former denounced them, particularly through the Rassemblement pour le retour des réfugiés et la démocratie au Rwanda (Union for the Return of Refugees and Democracy to Rwanda) (RDR), calling them "disguised forced repatriation". The latter considered that these measures were serious violations of some fundamental human rights, particularly the right of children, including refugee children, to education. Moreover, these deterrent measures, like the above-mentioned persuasive or incentive measures, have not brought about a significant return of refugees to Rwanda. According to UNHCR, in 1995 and 1996, only 362,000 refugees were repatriated, including 196,000 "new" and 166,000 "old" refugees. There were still 1,970,000 Rwanda refugees in Zaire and 535,000 in the United Republic of Tanzania. A new repatriation strategy thus had to be adopted.

2. The comprehensive strategy

161. The new strategy, intended to be both comprehensive and integrated, was adopted at a meeting of the UNHCR Executive Committee on 11 October 1996. It proposes four sets of measures: concerted measures aimed at dealing with the present situation; measures applicable to each individual country; measures to be taken jointly with the International Tribunal for Rwanda; and measures to be applied by the international community.

(a) Measures to be applied in an integrated manner

162. These measures comprise four main elements:

(a) UNHCR encourages the selective and progressive closure of the camps for the Rwandan refugees and active assistance in their repatriation. These measures must be implemented in conjunction with the exclusion clause applicable to intimidators and other leaders in the camps;

(b) UNHCR is to assist the Governments of the host States in determining on a case-by-case basis the status of persons not wishing to return to Rwanda. In doing so, they will automatically exclude asylum for persons sought by the International Tribunal against whom there is sufficient evidence of participation in the genocide. Such persons will have to be transferred to other locations for interrogation;

(c) Those persons losing their refugee status will cease to enjoy the international protection of UNHCR;

(d) In accordance with the Bujumbura Integrated Plan of Action, the above measures should be applied through close cooperation between the country of origin, the host countries and the international community.

(b) Measures to be applied in each of the countries concerned

163. These measures concern the country of origin, Rwanda, and the two host countries, the United Republic of Tanzania and Zaire.

(i) Rwanda

164. The Rwandan Government is to: (a) continue to promote the repatriation and resettlement of the refugees, in particular through an appropriate information campaign and the implementation of measures to reassure the refugees, in conformity with the Arusha Accord; (b) ensure the prosecution of persons suspected of genocide, under the Genocide Act, in order to break with the tradition of impunity; and (c) continue to cooperate with the Human Rights Operation in Rwanda, whose presence must be reinforced.

165. For the large-scale return of the refugees, food stocks will have to be constituted with UNHCR assistance. Furthermore, UNHCR will have to: (a) draw the attention of the authorities to real-estate and land ownership disputes; and (b) in agreement with the donor community, give emphasis to aid for the returnees, including specific projects for vulnerable groups. This will apply particularly to women, for whom a comprehensive programme entitled "Initiative

for Rwandan women" is due to start in 1997. This programme aims at promoting the economic power of women, strengthening social structures in the post-genocide society and facilitating the process of national reconciliation within the country.

(ii) United Republic of Tanzania

166. The Tanzanian Government is requested to: (a) initiate, with UNHCR assistance, the process of case-by-case consideration of requests from candidates for asylum, excluding those persons against who there is sufficient evidence of participation in genocide. A recently created separation camp will be available for this purpose; (b) tighten security around the camps because of the risks involved in such an exercise; and (c) afford protection to innocent persons with good reasons for not returning to Rwanda, not with a view to their integration, but for their eventual repatriation.

167. UNHCR, for its part, is committed to acting in concert with the international community to assist the United Republic of Tanzania in the rehabilitation of the environment and infrastructure destroyed by the presence of refugees in the part of its territory concerned.

(iii) Zaire

168. The Government of Zaire and UNHCR are requested to:

(a) Proceed with the selective and gradual closure of the camps. Those persons wishing to return to Rwanda will be given logistical support for their return and reintegration; the others will have to be separated from them by a screening process, after which those eligible for international protection will continue to be protected by the Government, without this in any way entailing their local integration;

(b) Considering the dangers involved in implementing this strategy, provision has been made for a number of accompanying measures: the Government of Zaire is to increase and strengthen the Zairian contingent, initially set at a maximum of 2,500 soldiers, for security in the camps. International aid will be provided to expand the contingent and ensure its training and supervision. There will have to be a proportional number of international security advisers, with specific commitments from the Governments concerned;

(c) Interested Governments - with UNHCR assistance - should agree with the Zairian authorities on specific measures to deal with cases of the manipulation of the refugees by intimidators (for example, violent sabotage of census operations) and to ensure that aid is not diverted to former FAR members still militarily active in North Kivu and South Kivu. With the assistance of the international community, the Government of Zaire must be called upon to dissolve the so-called "banana plantation" headquarters of the former FAR members and dismantle its military facilities. Zaire will cooperate fully with the International Tribunal;

(d) UNHCR must immediately inform the refugees in the camps located in Zaire that violent sabotage of its recent attempt to count the refugee population is an intolerable affront to its mandate, confirming the bad faith

of the camp leaders. A broad information campaign will have to be directed towards making the refugees aware of the fact that the blockage created by those leaders had led to a situation where food aid would be strictly controlled and reduced, especially to prevent it from being diverted. This measure will be linked stepwise to the gradual closure of the camps. UNHCR, with strong support from Governments, must seek the full cooperation of the Zairian Government in this regard;

(e) In order to respect the fundamental right of all children to education and to solve the problem of repatriation, the Government of Zaire will have to reopen primary schools for the refugee children and provide the means to protect them against manipulation and delinquency.

169. The Tripartite Commission (Rwanda/Zaire/UNHCR) will have to ensure greater coordination in the operation to close the camps. Lastly, in cooperation with donors and partners, UNHCR must endeavour to increase the assistance now being provided for the rehabilitation of the environment and infrastructure destroyed by the presence of the refugees in Zaire.

(c) Measures to be applied in cooperation with the International Tribunal

170. Together with the procedures to identify persons subject to the exclusion clause, every effort will have to be made to secure full support for reinforcing the activities of the International Tribunal to investigate and search for suspects.

171. In agreement with the Tribunal, UNHCR will determine the modalities for strengthening their cooperation. Governments have a central role to play in implementing the procedures aimed at separating and excluding persons suspected of genocide from international protection and bringing them before the Tribunal.

(d) Measures to be taken by the international community

172. The close link between the refugee crisis and peace in the Great Lakes region means that its problems have to be solved through the adoption of an integrated strategy encompassing the security, judicial, political and humanitarian dimensions. UNHCR intends to continue its close cooperation with the United Nations and the Organization of African Unity in this area. In addition to the financial aid expected from them, Governments must be requested to increase their assistance to Rwanda with a view to creating conditions of security there (for example, assistance in the administration of justice) and to provide incentives for the refugees to return. Governments will have to maintain a balance between the aid granted to refugees and assistance for the survivors of the genocide. They will have to bear in mind the major objective of national reconciliation.

173. Governments will also have to be requested to extend their full support to Rwanda, the United Republic of Tanzania and Zaire in the implementation of the measures described above and to take all necessary steps to deal with present tensions. They are invited to take care of the damage caused by the refugees to the environment and infrastructures in those three countries.

174. UNHCR had not yet begun implementing that ambitious programme when the crisis erupted in eastern Zaire.

C. The crisis in eastern Zaire

175. The Zaire crisis has jeopardized the UNHCR strategy that was beginning to give the international community hope. The forms of the crisis and especially its consequences in terms of the large-scale return of refugees therefore need to be considered.

1. Forms of the crisis

176. The Zaire crisis has two main forms, both closely linked with the problem of Rwandan refugees. It is at once a politico-military and a humanitarian crisis.

177. The politico-military dimension relates quite obviously to the armed clashes between the Banyamulengue Tutsi rebels, supported by the APR, and the Zairian armed forces. The conflict has its origin, as indicated above, in the massive and continued presence of Rwandan refugees in Zairian territory: the military and paramilitary activities of the former FAR members and the Interahamwe are not irrelevant in this, having served as a powerful catalyst for a latent internal crisis in the host country.

178. The second dimension - a consequence of the first - is the massive outflow of refugees heading first towards regions that were inhospitable and inaccessible to humanitarian organizations, to be confronted with hunger, thirst and diseases of all kinds, and then the departure of some of them for Rwanda. After long hesitation, the international community managed to agree in principle on the creation of a multinational humanitarian force, but unfortunately it could not be deployed because of the lack of political will and consensus among the parties involved and the main actors in the conflict. This explains the large-scale return of refugees.

2. Consequences of the crisis: the large-scale return of refugees

179. A distinction should be made between the refugees who returned from Zaire and those repatriated from the United Republic of Tanzania following the situation created in Zaire.

(a) The return from Zaire

180. The large-scale return of refugees from Zaire began on 15 November 1996. In the space of one week, nearly 600,000 refugees returned to Rwanda. They were generally accommodated in people's homes, some of them first passing briefly through transit camps.

(i) Reception in transit centres

181. The transit centres call for no particular comment, having been used very little for the repatriation of refugees from Zaire. When they were in operation, it was for less than 24 hours and at below their intake capacity.

To give just one example, the number of returnees received at the Gikondo centre (Kicukiro commune in the Kigali City prefecture) was 200 to 300 a day, whereas the centre can accommodate 1,000 people.

182. Instead of taking in all returnees, some of the transit centres specialized in catering for children and their reintegration into their family environment. At the Gihembe centre in the Byumba prefecture, the children were looked after by ICRC and World Vision. Between 18 November and 8 December 1996, for example, care was given to 784 children aged 1 to 16, many being in a critical condition due to malnutrition and dehydration. Officials reported one child death at the centre. By 8 December, of the 784 children received at Gihembe, only 67 had not yet rejoined their families.

(ii) Reception in people's homes

183. Most of the refugees returning to Zaire have been looked after by relatives, friends or neighbours who had stayed in Rwanda. UNHCR, in cooperation with the Government authorities and non-governmental organizations, distributed food and seeds to each commune in turn. In many cases, the hosts of the returnees shared their meagre resources with them while waiting for provisions to be distributed. In addition, the local authorities and non-governmental organizations worked together in operations to register and identify the children and arrange for families to be reunited. They also found accommodation for returnees without families. Generally speaking, the reception and reintegration proceeded smoothly, despite the lack of equipment and especially food.

184. Few cases of deaths or killings were reported during repatriation. By 6 December 1996, the Human Rights Operation in Rwanda had received confirmation of 12 deaths. Those deaths are, of course, to be deplored, but the number, relative to the total of 600,000 returnees, was lower than had been feared. In addition, however, there were a number of abductions and disappearances, in particular the abduction of the Bishop of Ruhengeri diocese, Mgr. Phocas Nikwigiza, who disappeared on 30 November 1996 on returning from Goma.

185. There have, on the other hand, been numerous arrests of returnees. Although rare at the beginning, these gradually increased in number, from 162 at the end of November 1996 to 700 by 15 December. The prefectures most concerned are those of Gisenyi, Rural Kigali and Ruhengeri, which together account for nearly 565 arrests. Most of the persons arrested are former FAR members. The others are individuals recognized as having clearly taken an active part in the genocide and other crimes against humanity. The persons detained thus include a former vice-president of the National Assembly, a former deputy prefect, six former mayors and a former district officer. In all, there are 14 politicians, among whom 6 appear on the list of alleged perpetrators of genocide belonging to the first category.

186. It is important to emphasize that, in some cases, freedom is the rule and arrest the exception, formal arrests taking place only where the returnee is at risk and needs to be protected from reprisals. Thus, many persons identified as former FAR members have been neither threatened nor arrested. In some communes, however, they have been given special identity cards and

must report once a week to the local gendarmerie. This is the case in the communes of Saké and Mugesera, in Kibungo prefecture. Nevertheless, considerably more arrests can be expected in the weeks to come, according to a statement by the authorities as reported by human rights observers.

(b) The return of refugees from the United Republic of Tanzania

187. Following the announcement by the Tanzanian authorities that the camps would be closed by 31 December at the latest, tens of thousands of refugees left them, heading further into the interior of the United Republic of Tanzania. They were immediately turned back by the army and took the road for Rwanda, like the refugees from Zaire a month earlier.

188. Between 14 and 21 December 1996, more than 300,000 refugees thus returned on foot or in trucks, which were made available in insufficient numbers and could transport only the most vulnerable refugees, including old people, the sick and children, who were directed towards transit centres such as the one at Nyakarambi. Most of the returnees went to Kibungo and Mutara prefectures. In all, Kibungo prefecture was to receive nearly 300,000 refugees and Mutara prefecture about 135,000, i.e. 95 per cent of those expected to be returning from the United Republic of Tanzania. The commune of Rusumo alone was to receive more than 100,000 returnees, while Rukira commune was to receive 50,000.

189. During the repatriation, the authorities refused to allow some non-governmental organizations and vehicles to be on the roads, arguing that the massive presence of motor vehicles had caused traffic jams and prevented the harmonious repatriation of refugees from Zaire in November. The Human Rights Operation in Rwanda therefore had only partial access to the areas through which most of the returnees were passing and the observers had great difficulty in evaluating the human rights situation during this forced repatriation. It seems from piecemeal reports that, unlike the repatriation from Zaire in November, the repatriation from the United Republic of Tanzania took place in generally bad conditions, giving rise to several incidents between local people and returnees. In a report dated 23 December, the Human Rights Operation provides several examples of physical assaults resulting in injuries or deaths and one attempted lynching by the local population which was prevented by the official responsible for the area.

IV. RECOMMENDATIONS

190. The recommendations made here duly reflect the measures to be taken in the short and medium term. The measures relate primarily to the prosecution of persons suspected of genocide, the cessation of human rights violations, social rehabilitation and a political settlement of the Great Lakes crisis.

A. Prosecution of persons suspected of genocide

191. The United Nations should:

(a) Provide the International Tribunal with sufficient human and material resources for it to be able to carry out its mission as effectively as possible;

(b) In cooperation with other relevant organizations, increase its assistance to the Rwandan Government for the purpose of reactivating and reconstituting the entire judicial system;

(c) Urge States hosting persons sought by the International Tribunal to hand them over for trial.

192. The United Nations should, as recommended in the preceding report (E/CN.4/1996/68, paras. 141 and 142):

(a) Establish an appropriate legal framework to ensure the protection of widows, women raped during the genocide, orphans and unaccompanied children and to guarantee their fundamental rights. In this connection, it would be appropriate to provide the means for them to be compensated by establishing a special fund;

(b) Provide more substantial assistance to the Rwandan Government for programmes aimed at the social and psychological rehabilitation of the above-mentioned vulnerable groups of people by supplying it with the equipment, funds and expertise needed for the full implementation of such programmes;

(c) Recommend that the Rwandan Government should take appropriate measures, in particular discriminating in favour of women, children and the Twas, to ensure their social rehabilitation and well-being while respecting the equality of citizens before the law.

B. Cessation of human rights violations

193. The United Nations should:

(a) Call on the Rwandan Government to take appropriate steps to ensure full respect for human rights and fundamental freedoms. It should in particular urge the Rwandan authorities to take appropriate measures to ensure:

(i) Observance of the forms and procedures provided for by the international rules governing the arrest and detention of suspected criminals;

(ii) Observance of freedom of expression and, in particular, the independence of the judiciary, two fundamental principles which are essential for the establishment of democracy and the rule of law;

(iii) Punishment of all human rights violations in order to break with the tradition of impunity;

(b) Provide appropriate and adequate funding for the Human Rights Operation in Rwanda with a view to increasing the number of observers, as already recommended in the preceding report, from 147 (the figure initially

planned, but never achieved) to 300, enabling them simultaneously and satisfactorily to ensure the supervision, reception and repatriation of refugees and especially to deal with their massive return.

C. Social reintegration

194. The United Nations should recommend that:

(a) The Rwandan Government, as recommended in the preceding report, should continue to conduct and intensify campaigns to raise awareness among the population and thus avoid the perpetration of reprisals against returnees. Administrative measures accompanied by effective sanctions should be adopted to that end;

(b) The school and academic infrastructure should be revitalized through the input of human and material resources. Special assistance should be allocated for the re-establishment of the National University of Rwanda, and especially its law faculty, which will have the task of training lawyers to strengthen the judiciary;

(c) Member States should effectively make available to the Rwandan Government all funds promised at the Geneva Round Table Conference and provide further assistance to enable it to implement programmes for rebuilding economic and social infrastructures.

D. Comprehensive settlement of the Great Lakes crisis

195. The United Nations should:

(a) Urgently convene, in agreement with the Organization of African Unity, an international conference on the Great Lakes with a view to solving the problems of the region as a whole and, if necessary, arrange for a special session of the Commission on Human Rights to consider the specific dimension of the protection and promotion of human rights;

(b) Adopt a comprehensive strategy based on an integrated approach to the problems of the Great Lakes subregion aimed at (i) achieving a peaceful and lasting settlement of the Great Lakes conflict; and (ii) preventing the outbreak of a general conflict threatening the stability of the region as a whole.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Nigeria prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers

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Introduction

1. The present report is the final report submitted to the Commission on Human Rights by Mr. Bacre Waly Ndiaye, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, pursuant to resolution 1996/79 of the Commission on Human Rights entitled "the situation of human rights in Nigeria".

2. Due to the fact that the Special Rapporteurs have been unable to undertake a fact-finding mission to Nigeria, the present report should be read in conjunction with the interim report that the Special Rapporteurs submitted to the fifty-first session of the General Assembly (A/51/538). In the event that the Special Rapporteurs are able to undertake the requested mission prior to the fifty-third session of the Commission on Human Rights, it is their intention to submit a report of their findings, either in written form as an addendum to the present report or orally, to that session of the Commission.

3. The present report is divided into four chapters. Chapter I contains the terms of reference of the respective mandates of the two Special Rapporteurs. Chapter II contains a summary of the communications between the two Special Rapporteurs and the Government of Nigeria between the finalization of the interim report and the date on which the present report was finalized. Chapter III contains replies from the Government of Nigeria to allegations of extrajudicial, summary or arbitrary executions and allegations sent by the Special Rapporteur on the independence of judges and lawyers. Chapter IV contains the preliminary observations of the Special Rapporteurs pending their visit to Nigeria.

I. MANDATE

4. The fifty-second session of the Commission on Human Rights adopted without a vote resolution 1996/79 of 23 April 1996. In this resolution, the Commission expressed its deep concern about violations of human rights and fundamental freedoms in Nigeria and called upon the Government of Nigeria urgently to ensure their observance, in particular by restoring habeas corpus, releasing all political prisoners, trade union leaders, human rights advocates and journalists who are at present detained, guaranteeing freedom of the press and ensuring respect for the rights of all individuals, including persons belonging to minorities. It also called upon the Government of Nigeria to accede to the request of the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers to pay a joint investigative visit to Nigeria. Further, the Commission called upon the Government of Nigeria to cooperate fully with the relevant mechanisms of the Commission on Human Rights. Finally, it requested the two thematic Special Rapporteurs who had requested a joint investigative visit to the country to submit to the Commission at its fifty-third session a joint report on their findings, along with any observations of other relevant mechanisms, in particular the Working Group on Arbitrary Detention, and requested them to submit an interim report to the General Assembly.

5. In resolution 1996/74 the Commission on Human Rights requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to continue to examine situations of extrajudicial, summary or arbitrary executions. In resolution 1994/41 the Commission requested the Special Rapporteur on the independence of judges and lawyers, inter alia, to inquire into any substantial allegations regarding attacks against the independence of judges and lawyers transmitted to him and to report his conclusions thereon.

6. In resolution 51/109, the General Assembly regretted that the Government of Nigeria had not enabled the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country before presentation of their report to the Assembly, and urged the Government of Nigeria to cooperate fully with them during the joint investigative mission to Nigeria mandated by the Commission on Human Rights, and with the relevant mechanisms of the Commission on Human Rights.

II. COMMUNICATIONS BETWEEN THE SPECIAL RAPPORTEURS AND THE GOVERNMENT OF NIGERIA

7. On 4 October 1996, the Permanent Representative of Nigeria to the United Nations Office at Geneva replied to the letters of the Special Rapporteurs, dated 30 July and 6 September 1996, respectively. The Permanent Representative reiterated the Government's commitment to accede to the request of the Special Rapporteurs to carry out a joint investigative visit to Nigeria. He also informed the Special Rapporteurs that since March 1996, the Government of the Federal Republic of Nigeria "has been seized with the management of a number of successive visits to Nigeria, such as the United Nations Fact-Finding Mission, the African Commission on Human and Peoples' Rights, the Commonwealth Ministerial Action Group, the United Nations Goodwill Mission to Nigeria and Cameroon (...) and many others". In addition, he stated that "the Government and people of Nigeria have committed themselves to the faithful and orderly implementation of our Programme for Transition to Civil Rule (...)". The Permanent Representative further stated that as a consequence of these visits, it had become difficult to accede to the request of the Special Rapporteurs to carry out a mission to Nigeria in the specified time-frame. Upon instruction of the Government of the Federal Republic of Nigeria, he reiterated Nigeria's willingness and readiness to welcome the Special Rapporteurs and proposed the last week of November 1996 or the second week of December 1996 as possible dates for the visit.

8. On 7 October 1996, the Special Rapporteurs informed the Government of Nigeria that they were pleased to accept the invitation of the Government. In addition, they expressed their preference for the first alternative proposed by the Government, i.e. the last week of November 1996. In view of the fact that the Special Rapporteurs believe that this mission would require a minimum of 10 working days in the country, they suggested that the mission should tentatively take place from 25 November to 5 December 1996. The Special Rapporteurs also enclosed for the information of the Government the standard terms of reference for fact-finding missions by Special Rapporteurs/Representatives of the Commission on Human Rights.

9. On 8 November 1996, the Permanent Representative acknowledged receipt of the letter of 7 October 1996 and informed the Special Rapporteurs that upon receipt of the precise details of the mission, the Government would also be informed. Subsequently, a note verbale, dated 18 October 1996, was received from the Permanent Mission in Geneva requesting further clarification from the Centre for Human Rights regarding a number of issues:

(a) As to the precise mandate of the rapporteurs, it was the understanding of the Government that in accordance with the operative part of resolution 1996/79 the rapporteurs are "thematic" and not "special" rapporteurs; the terms of reference sent by the two rapporteurs did not seem to be meant for thematic rapporteurs;

(b) The Government sought assurances that the thematic rapporteurs would work strictly within their express mandate;

(c) While assuring the rapporteurs unfettered access to persons and places in order to discharge their mandate, the Government requested that matters concerning their itinerary and the places and persons to be visited should be mutually agreed between the rapporteurs and the officials of the Nigerian Government;

(d) "As per the rapporteurs' earlier request to visit Nigeria from 9-17 October 1996 (...) which was accepted in principle, it [was] the Government's view that there [was] no compelling reason to extend the visit any further." In this regard, the Government of Nigeria expected the rapporteurs "to propose, for discussion, an itinerary for a week's visit".

10. The Government further stated:

> "Nevertheless, the Government of Nigeria wishes to state that owing to the impending visit of the Commonwealth Ministerial Action Group (CMAG), local government elections on [a] party basis and the ongoing consolidation of newly created states, all scheduled to take place in the month of November 1996, we regret to say that the 25th of November 1996, the first date which the rapporteurs have expressly preferred, is **not** convenient to Nigeria. The Federal Government of Nigeria, therefore, craves the indulgence of the thematic rapporteurs to consider the second alternative (...) for the visit to take place in the second week of December 1996, for one week only."

11. On 24 October 1996, the United Nations High Commissioner/Centre for Human Rights transmitted to the Permanent Mission of Nigeria a note verbale informing the Permanent Mission that in the discharge of their mandates, all special rapporteurs of the Commission on Human Rights act in their capacity as independent experts. It is thus within their discretion to propose to the Government of any country which they would wish to visit a programme that they considered to be relevant to their mandates. The note verbale also stated that it remained, of course, the prerogative of the Government to approve the proposed dates, programmes and itinerary. As regards the terms of reference,

the Permanent Mission was informed that those attached to the letter of the Special Rapporteurs dated 7 October 1996 were the standard terms of reference which are used for country visits of all special rapporteurs of the Commission on Human Rights, both thematic and country-specific.

12. On 25 October 1996, the Special Rapporteurs, in reply to the note verbale of the Permanent Mission of Nigeria of 18 October 1996, stated that in their view the terms of reference attached to their letter of 7 October 1996 are the standard minimum guarantees required for any mission to be conducted by special rapporteurs of the Commission on Human Rights. The Special Rapporteurs stated that the acceptance of these terms of reference by the Government of Nigeria would therefore be a prerequisite for undertaking the mission. Furthermore, the Special Rapporteurs informed the Government that they would wish to visit several regions of the country, for instance Lagos, Abuja, Kaduna, Kano and Port Harcourt, and that in their view the mission would require a minimum of two weeks. At the time the present report had been finalized, the Special Rapporteurs had received no direct reply to this letter. Finally, the Special Rapporteurs stated that until these two issues were clarified, it would be premature to consider the second alternative proposed by the Government, i.e. the second week of December, or to propose an itinerary for a week's visit.

13. The Government acknowledged receipt of the note verbale on 25 October 1996.

14. The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva transmitted to the Centre for Human Rights a note verbale dated 6 December 1996, which refers to the letter of the two Special Rapporteurs to the Permanent Mission of 25 October 1996 concerning the proposed joint investigative mission to Nigeria. Due to the seriousness of the allegations contained in this note verbale, the Special Rapporteurs consider it important to reproduce verbatim the substantive portions of the note, which read as follows:

> "In this regard, the Permanent Mission of Nigeria wishes to set out hereunder the following comments of the Federal Government of Nigeria:
>
> "a. It will be recalled that, in the Mission's Note No. 262/96 of October 1996, it was made clear that, owing to the impending visit of the Commonwealth Ministerial Action Group (CMAG) to Nigeria - a visit to which the Government of Nigeria had committed itself much earlier - the visit to Nigeria could not begin on 25 November 1996 under the option which the Special Rapporteurs had expressly preferred because it would not be convenient for the Government. The visit by CMAG actually took place from 19 to 22 November 1996. It was certainly not possible for Government to accommodate another important visit around 25 November 1996, having regard to the time and efforts usually expended in the preparation for such meetings. That in fact had informed Government's preference for the second week in December 1996 for the visit to Nigeria by the Special Rapporteurs;

"b. The Thematic Rapporteurs left no one in doubt that they were prepared to consider and accept the Government's 2nd option of mid-December once the issues of the terms of reference and duration of visit were sorted out. In fact, the Government of Nigeria and the Thematic Rapporteurs had opened a communication line to sort out issues concerning the visit. There was no outright rejection of Government's proposal by the Thematic Rapporteurs nor was there any indication that the Government was 'reneging' or had become 'recalcitrant in its attitude' towards the visit. It is a matter of regret that one of the two Rapporteurs has chosen to characterize a sovereign state, Nigeria, which is engaged in consultations, as 'recalcitrant';

"c. While the Federal Government of Nigeria was giving active consideration to the issues relating to the terms of reference and duration of the visit, the Thematic Rapporteurs had at different international meetings conducted themselves in a manner that could undermine the spirit of the dialogue. The statements and utterances credited to the two Thematic Rapporteurs were not only unfortunate, they were also capable of undermining the impartiality and integrity of these independent and neutral experts appointed by sovereign independent states in the Commission of Human Rights in which Nigeria is an active member. We view the statements and utterances of the two Rapporteurs as capable of compromising their independence and neutrality;

"d. Specifically, Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, had, for instance, accused Nigeria of being responsible for the death of Mrs. Kudirat Abiola. He made these remarks at an international seminar organized by Amnesty International in Port Louis, Mauritius, on 25 October 1996. While castigating Nigeria for the deaths in Nigerian prisons, Mr. Ndiaye said that the death of Mrs. Abiola was the result of 'killing by government officials';

"e. The joint introductory statement of the two Thematic Rapporteurs delivered by Mr. Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, in the Third Committee of the Fifty-first Session of the United Nations General Assembly was, to all intents and purposes, condemnatory of the Government of Nigeria. The report contained conclusions which the two Rapporteurs had reached without hearing the views of the Government of Nigeria. It was based purely on unverified reports. The interim report was not only condemnatory of the Government, it was mischievous in intent, having been issued long before 25 November 1996, the date on which the Thematic Rapporteurs had planned to begin the visit to Nigeria. It contained spurious allegations which the Thematic Rapporteurs had concocted to serve their interests, and perhaps, those of Nigerian detractors. By issuing such a tendentious report, they not only exceeded their mandate but abused the laid-down procedure when they called upon the United Nations General Assembly to 'adopt appropriate stern measures' against Nigeria, even before the world body had the time to consider the so-called interim report;

"f. While Government reaffirms its commitment to cooperate with the United Nations Commission on Human Rights and all its mechanisms, it has

serious reservations on the integrity and impartiality of these two Thematic Rapporteurs. As independent and neutral experts appointed by states, they have jointly and severally shown very little or no regard for patience, details and circumspection. Their actions betray their zealousness to condemn the Government of Nigeria before 'trial';

"g. In the circumstances, the Government of Nigeria seriously doubts the competence and relevance of these Thematic Rapporteurs to conduct an impartial, fact-finding mission to Nigeria and to faithfully report their finding without bias;

"h. Be that as it may, the invitation extended by the Government still stands."

15. In a meeting with the High Commissioner for Human Rights on 10 December 1996, the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office at Geneva conveyed the concerns of his Government regarding the two Rapporteurs, but reiterated the Government's wish to continue to cooperate with the Commission on Human Rights and, to this end, the invitation to the two Special Rapporteurs still stood. However, the Permanent Representative indicated that the Government of Nigeria still sought clarification on the terms of reference of the visit and the duration of the visit. The Permanent Representative expressed the desire of his Government to send representatives from Nigeria to Geneva to negotiate these outstanding issues with the High Commissioner.

16. The High Commissioner informed the Permanent Representative that he lacked the authority to negotiate on behalf of the Special Rapporteurs because they were independent experts. However, he did assure the Permanent Representative that the note verbale of 6 December and the desire of the Government to resolve the outstanding issues would immediately be transmitted to the two Special Rapporteurs.

17. In a letter dated 18 December 1996, the Special Rapporteurs welcomed the fact that the invitation of the Government for them to visit still stood. With regard to specific dates for a visit, they proposed to travel to Nigeria in the latter half of February following the end of Ramadan. The Special Rapporteurs, however, also reiterated their position that the standard terms of reference that they had transmitted to the Government, which they viewed as general principles, should be accepted by the Government before they undertook the mission. They noted that the specific details of the mission, such as the locations and officials to be visited, were matters which must be mutually agreed upon. Nevertheless, they emphasized that Special Rapporteurs usually reserve only half of their time for official meetings and were free to organize for themselves informal meetings with non-governmental organizations and private individuals as appropriate. With regard to the duration of the mission, they still considered that a mission that envisaged travelling to several cities in Nigeria would require more than one week, but they expressed their willingness to discuss this issue and to take the views of the Government into consideration.

18. Regarding the proposal of the Government to hold meetings in Geneva to discuss these issues, the Special Rapporteurs informed the Permanent Representative that pre-existing commitments in their respective countries prevented them from travelling to Geneva. As an alternative, they had requested the Centre for Human Rights (Activities and Programmes Branch) to provide to the Government any clarification that it might seek and to explain their intentions to the representatives of the Government.

19. Pursuant to this proposal, a meeting was held between representatives of the Federal Republic of Nigeria and the Secretariat on 14 January 1997. The Nigerian delegation was led by Dr. A.H. Yadudu, Special Adviser (Legal Matters) to the head of State, Commander-in-Chief of the Armed Forces. Also in attendance at the meeting on behalf of the Federal Republic of Nigeria were Ambassador Ejoh Abuah, Permanent Representative of Nigeria to the United Nations Office at Geneva; Mr. A.B. Rimdap, Minister, International Organizations Directorate, Ministry of Foreign Affairs; Dr. Orobola Faschun, Minister, Permanent Mission of Nigeria to the United Nations Office at Geneva, and Mr. C.U. Gwam, Senior Counsellor, Permanent Mission of Nigeria to the United Nations Office at Geneva.

20. At the meeting, the Secretariat presented an aide-mémoire to the Nigerian delegation providing clarification on some of the issues raised in the note verbale of 6 December 1996. The main points addressed were as follows:

(a) Concerning the standard terms of reference, the Special Rapporteurs stated that these should remain the basic framework for the mission;

(b) Concerning the dates and duration of the visit, the Special Rapporteurs indicated that they would be available to undertake the mission between 15 and 28 February 1997. They further noted that a minimum of 10 working days was required in order to be able to travel to different parts of the country. They also proposed that one staff member of the Centre would travel several days earlier in order to prepare meetings for the Special Rapporteurs;

(c) Concerning the regions to be visited in Nigeria, the Special Rapporteurs expressed the wish to travel to the following towns: Lagos, Abuja, Port Harcourt, Kaduna and Kano;

(d) Concerning the authorities to be met in Nigeria, the Special Rapporteurs provided a detailed list of the authorities they wish to meet;

(e) Concerning the issue of detained persons, the Special Rapporteurs noted that they wished to meet with a number of detained persons and thus requested free access to prisons and places of detention;

(f) Concerning the issue of reports, the Special Rapporteurs noted that an interim report would be submitted by them to the fifty-third session of the Commission on Human Rights and, if the mission took place, a separate joint report on the mission would be issued.

21. At the meeting of 14 January, the representatives of the Government of Nigeria sought clarification and assurances on the following four issues:

(a) Concerning the duration of the visit, the representatives questioned why the Special Rapporteurs had initially requested a visit of eight days, but had more recently requested a visit of longer duration;

(b) Concerning the programme and terms of reference, the Government asked for clarification of the terms "unfettered access" and "restricted areas", which were contained in the standard terms of reference, and the reasons for the requested access to such areas;

(c) The Government sought assurances that the Special Rapporteurs would conduct themselves specifically and exclusively within the scope of the mandate;

(d) The Government expressed the view that the Special Rapporteurs had compromised their impartiality and, therefore, there were serious concerns on the part of the Government concerning the integrity and impartiality of the Special Rapporteurs. They requested that these concerns be conveyed to the Special Rapporteurs and that the reactions of the Special Rapporteurs to these concerns be communicated to the Government.

22. In a note verbale dated 20 January 1997, the Permanent Mission of Nigeria provided a preliminary reaction to the aide-mémoire given to the representatives of Nigeria during the meeting of 14 January. The observations are as follows:

(a) Concerning the terms of reference, the Permanent Mission stated that it was awaiting clarification of the term "restricted areas", and considered that it was not advisable for the Special Rapporteurs to visit these areas from the point of view of Nigeria's national security;

(b) Concerning the dates and duration of the proposed mission, the Permanent Mission noted that the Government was still of the opinion that the Special Rapporteurs could complete their visit within one week. It also stated that the issue of the duration of the visit would first need to be clarified before the Government could decide on the issue of the arrival of a United Nations staff member before the arrival of the Special Rapporteurs;

(c) Concerning the regions to be visited, the Permanent Mission stated that the Government had no objection to the proposed visit to the five towns mentioned in the aide-mémoire;

(d) Concerning the authorities to be met, the Permanent Mission pointed out that enough time was needed to book appointments with the persons mentioned in the list annexed to the aide-mémoire. The Permanent Mission also requested the names and positions of the regional and local officials with whom the Special Rapporteurs had expressed an interest in meeting;

(e) Concerning the issue of detained persons, it noted that the Government had no objection to these meetings; however, information on the dates and times of the visits was requested in order to facilitate interviews;

(f) In addition, it repeated that the Government needed to be assured of the impartiality and independence of the two Special Rapporteurs.

23. The following note containing the reactions of the Special Rapporteurs to the concerns of the Government about their integrity and impartiality was attached to a letter dated 20 January 1997 to the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office at Geneva.

> "(1) With regard to the concern expressed by the Government of Nigeria that the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, is reported on the occasion of the Amnesty International meeting in Port Louis, Mauritius, in October 1996 to have stated that the Government of Nigeria killed Mrs. Kudirat Abiola, the Special Rapporteur wishes to communicate to the Government of Nigeria that the attributed statement appears to have been mistakenly reported. Rather than having stated any conclusions about the responsibility of the Government of Nigeria, the Special Rapporteur wishes to clarify that he stated only that he had 'received allegations that government officials were responsible for the death of Mrs. Abiola'. For Mr. Ndiaye, this acknowledgement is a statement of fact and is not in any way a determination on his part. Consequently, Mr. Ndiaye trusts that, in communicating this clarification to the Government of Nigeria, there remains no reason to doubt his impartiality.
>
> "(2) With regard to the Government of Nigeria's concern that the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, expressed definitive conclusions in his statement of 18 November 1996 before the fifty-first session of the General Assembly, the Special Rapporteur wishes to convey to the Government of Nigeria the following:
>
> > 'The Special Rapporteur on the independence of judges and lawyers, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, was required by Commission resolution 1996/79 to report to the fifty-first session of the General Assembly. This requirement was known to the Government of Nigeria. In possession of considerable information relating to alleged serious violations of human rights in Nigeria, and in the absence either of a substantive response from the Government concerning specific allegations transmitted during the year or of the opportunity to visit the country, the Special Rapporteurs were thus required at least to inform the General Assembly about the substance of allegations received and to draw such preliminary conclusions as may be possible by reference to, e.g., declared laws and acknowledged practices. From this perspective, the Special Rapporteur on the independence of judges and lawyers fails to see that any of his statements, including conclusions preliminarily drawn, could be viewed as bringing into question his impartiality'."

24. In a letter dated 22 January 1997 to the Permanent Representative, the following note was transmitted on behalf of the Special Rapporteurs in response to the note verbale 18/97 dated 20 January 1997:

> "(1) In response to the request of the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva seeking clarification of the term 'restricted areas' contained in paragraph 1 of the standard terms of reference, the Special Rapporteurs are not aware that any of the cities that they have requested to visit is in a restricted area or that any part of the cities is demarcated as restricted.
>
> "(2) As to why the proposed visit has been extended by 8 days to 14 days, the Special Rapporteurs reiterate their view that visits to Lagos, Abuja, Port Harcourt, Kaduna and Kano, all of which would entail several meetings with government and non-governmental officials, require a minimum 10 to 14 days. Further, they would note that the duration of this visit is comparable to the duration of missions they have undertaken to other countries. The proposal that a visit for a period of 8 days be made in October 1996 was based upon the overriding wish of the Special Rapporteurs to visit Nigeria prior to submitting their report to the General Assembly **and** in view of the limited time available to them owing to prior commitments and owing to the deadline for submission of reports.
>
> "(3) With respect to the issue of an advance party of a United Nations staff member to Nigeria, the Special Rapporteurs would propose that one member of the Secretariat travel to Nigeria three days in advance of their arrival, i.e. arrive in Nigeria on 12 February.
>
> "(4) With respect to the issue of authorities to be met, the Special Rapporteurs note that they are not in a position to provide the names and positions of representatives of local and state administration of the different states. However, in general, the Special Rapporteurs wish to meet local and state authorities in the cities to be visited who are responsible for the administration of justice, including those in charge of police/security, courts, prisons and other places of detention such as remand centres."

25. Although the Special Rapporteurs do not wish to address all of the points raised in the note verbale of 6 December 1996, they would note the following facts. First, and foremost, it should be recalled that the two Special Rapporteurs first requested permission from the Government of Nigeria to undertake a fact-finding mission in November 1995. In the interim, three concrete dates had been proposed for the mission: 7-20 July 1996, 9-17 October 1996 and 25 November to 5 December 1996. On each occasion the Government of Nigeria found the dates to be inconvenient.

26. Second, contrary to what was implied in the note verbale of 6 December 1996, the latter dates were proposed by the Government and not the Special Rapporteurs. In its letter of 4 October 1996, the

Government of Nigeria informed the Special Rapporteurs that it would be willing to receive the Special Rapporteurs in the last week of November 1996 or the second week of December; the Special Rapporteurs chose the first alternative. If the Government had committed itself to the end of November to the CMAG much earlier, then why did it suggest the last week of November to the Special Rapporteurs? Further, in their letter of 25 October 1996, after the Government had informed them that the dates were inconvenient and had raised questions concerning the terms of reference, the Special Rapporteurs clearly expressed their view that it would be premature to consider the second alternative before the issues concerning the terms of reference and the duration of the visit were resolved.

27. Third, in his letter of 6 September 1996, the Special Rapporteur on the independence of judges and lawyers had reminded the Government that the Commission on Human Rights had requested the two Thematic Rapporteurs to submit an interim report to the General Assembly. The Government was further informed that if the Rapporteurs had not received a reply by 23 September to their request to have the mission take place from 9 to 17 October, dates which had been proposed on 18 June, that they would be compelled to prepare the interim report solely on the basis of information that had been received from non-governmental and intergovernmental organizations. In the view of the Special Rapporteurs, they were mandated to submit an interim report irrespective of the fact that they had not been able to undertake the fact-finding mission.

28. In this regard, it should also be noted that the deadline for the submission of reports to the General Assembly was 30 September 1996. This deadline is based upon the fact that the General Assembly requires all United Nations documents to be circulated simultaneously in the six official languages; the Secretariat requires a minimum of six weeks to translate and print documents in the six languages. On an exceptional basis, the Special Rapporteurs were granted an extension to allow them an opportunity to undertake the mission prior to drafting the interim report.

29. Fourth, the allegations contained in the interim report are based upon information received from reliable non-governmental organizations, the report of the Secretary-General on his mission to Nigeria and the observations of the Human Rights Committee. Further, it should be emphasized that all allegations contained in the interim report had been transmitted to the Government during the course of 1996 by special rapporteurs and working groups of the Commission on Human Rights, including the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the question of torture and on the independence of judges and lawyers and the Working Group on Arbitrary Detention. Despite the fact that the Government had been requested by each of these mechanisms to provide a response to the allegations, none of the mechanisms had received a substantive reply from the Government during the course of 1996. The Government finally provided a reply to allegations transmitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers in the second half of December 1996.

III. REPLIES FROM THE GOVERNMENT TO ALLEGATIONS OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS AND TO ALLEGATIONS SENT BY THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

30. On 17 December 1996, the Government provided a reply to the urgent appeal of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 6 May 1996, containing allegations of acts of harassment and intimidation by members of the Nigerian delegation during the fifty-second session of the Commission on Human Rights in Geneva against Mr. Innocent Chukwuma (see A/51/538, para. 38). The Government stated that this person, who was well known in Nigeria, had never been threatened or harassed by the delegation, nor had he previously been threatened by security forces in Nigeria. In addition, the Government provided the Special Rapporteur with replies to the cases containing allegations of extrajudicial, summary or arbitrary executions which had been sent to the Government by the Special Rapporteur on 4 June 1996 (see A/51/538, paras. 39-40).

31. The Government forwarded a report from the Inspector-General of the Nigerian Police Force, and stated that from this document it appeared that the deaths were not cases of extrajudicial, summary or arbitrary executions by those in authority but "a clear case of murder caused by accidental discharge of firearms".

32. Information was also provided on the following cases:

(a) Concerning the case of Prince A. Ayamolowo, the Government informed the Special Rapporteur that the police investigation so far was inconclusive since the suspect, an ex-sergeant of police, was on the run. He had, however, been dismissed from the police force and has been declared wanted for further investigation;

(b) Concerning the case of the alleged killing of three minors named Gabriel M. Lucky, aged 12, Kpannem Nicodimus, aged 13, and Barisi Deemus, aged 14, the Government informed the Special Rapporteur that "the alleged murder did not occur at any time and besides, no report of any such incident whatsoever was made in any of the police stations in Ogoniland or elsewhere. Inquiries conducted at the government and privately owned hospitals in Port Harcourt revealed that no such or similar incident was reported or handled.";

(c) Concerning the killing of Istaku Ibrahim, the suspect, a member of the police force, was found guilty and dismissed from the police force before he was charged before the Chief Magistrate Court;

(d) Concerning the killing of Taiwo Akinola, the suspect, an ex-corporal, was tried and dismissed from the force. After criminal investigation, the case was forwarded to the Lagos State Director of Public Prosecutions for vetting, advice and prosecution;

(e) Concerning the killing of Attah Felicia, upon completing the preliminary investigation by the police, a corporal was tried and found guilty

and dismissed from the force. A case of murder has been filed against him and he was formally arraigned in Nsukka High Court. A hearing was to be held at 18 September 1996;

(f) Concerning the alleged execution of 43 persons convicted by the Armed Robbery and Firearms Tribunal in Lagos, the Government could not yet provide any information to the Special Rapporteur.

33. On 20 November 1996, the Government provided the Special Rapporteur with a reply to the allegations he had transmitted on 6 August 1996 concerning the alleged detention of lawyers Robert Azibola and Uche Okwukwu, the defence lawyers of the 19 Ogoni members of the Movement for the Survival of the Ogoni People (MOSOP) (see A/51/538, para. 87). The Government informed the Special Rapporteurs that they were never detained. Concerning the trial of the 19 Ogoni, the Government furthermore stated that their trial had been stalled due to the reconstitution of the Civil Disturbances Tribunal which would now have no military member on it and whose verdict would be subject to appeal to a higher judicial tribunal. As soon as the tribunal had been reconstituted in accordance with the new and amended decree, the trial will resume.

34. Concerning the detention of Mr. Olisa Agbakoba, the Government informed the Special Rapporteur that he had not been detained (see A/51/538, para. 88). Moreover, the Special Rapporteur was informed in the same communication that lawyers Gani Fawehinmi and Femi Falana had been released (see A/51/538, para. 88).

IV. PRELIMINARY OBSERVATIONS

35. The Special Rapporteurs welcome the fact that attorneys Gani Fawehinmi and Femi Falana were released from prison on 18 November 1996 prior to the visit of the Commonwealth Ministerial Action Group.

36. The Special Rapporteurs reiterate their observations, conclusions and recommendations made in the interim report to the General Assembly subject to their observations on events subsequent thereto and set out in this report. Nevertheless, the Special Rapporteurs would like to postpone final conclusions until they have been able to undertake the fact-finding mission to Nigeria. However, they would like to make the following preliminary observations:

(a) While welcoming the fact that the invitation was extended by the Government, the Special Rapporteurs deeply regret that no agreement has been reached on the dates of the visit and that the Government, to date, has not accepted the standard terms of reference;

(b) The Special Rapporteurs also regret that the Government of Nigeria invoked the preparation for missions of other organizations or organs, as well as activities in the framework of the implementation of the Programme of the Transition to Civil Rule, as reasons for not receiving the two Special Rapporteurs at a time which had previously been proposed by the Government. They wish to emphasize that they welcome and encourage the implementation of the Programme of Transition to Civil Rule;

(c) The Special Rapporteurs wish to reiterate that the acceptance of the terms of reference by the Government of Nigeria is, in their opinion, a conditio sine qua non before further negotiations can take place with regard to the time-frame, programme or itinerary of the visit;

(d) If the Special Rapporteurs are unable to undertake a visit to the country prior to the fifty-third session of the Commission on Human Rights, they will be left with no alternative but to report to the Commission that the Government has failed to comply with resolution 1996/79.

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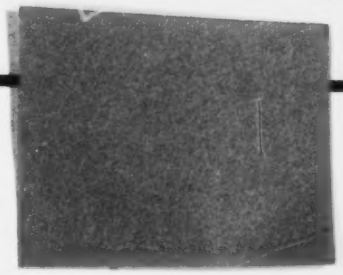

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Nigeria

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre W. N'diaye, and the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 1996/79

Addendum

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GE.97-11255 (E)

Introduction

1. The present report is an addendum to the report on the situation of human rights in Nigeria (E/CN.4/1997/62) submitted to the Commission on Human Rights by Mr. Bacre Waly N'diaye, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, pursuant to resolution 1996/79 of the Commission on Human Rights.

2. The Special Rapporteurs deeply regret that they are unable to report to the Commission their findings based upon a visit to Nigeria. As noted in their report, the Special Rapporteurs had hoped to carry out a fact-finding mission to Nigeria prior to the fifty-third session of the Commission on Human Rights (see E/CN.4/1997/62, para. 2). In fact, a mission was agreed upon between the Special Rapporteurs and the Government of Nigeria and was to take place from 23 February to 5 March 1997. However, following the arrival of an advance party in Nigeria, it became obvious that the Government of Nigeria was not prepared to allow the Special Rapporteurs to meet certain detainees. In the view of the Special Rapporteurs, this is a violation of the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, and therefore, as a matter of principle, was unacceptable to them. Accordingly, the Special Rapporteurs informed the Government that they would not carry out the mission under those conditions.

3. The present report is divided into three chapters. Chapter I contains a summary of the communications and meetings between the two Special Rapporteurs and the Government of Nigeria between the finalization of the report and the date on which the addendum to the present report was finalized. Chapter II contains an analysis of the allegations the Special Rapporteurs have received concerning issues that fall within the scope of their respective mandates. Chapter III contains the conclusions and recommendations of the Special Rapporteurs.

I. COMMUNICATIONS AND MEETINGS BETWEEN THE SPECIAL RAPPORTEURS AND THE GOVERNMENT OF NIGERIA

4. The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva (hereinafter the Permanent Mission) transmitted Note Verbale 36/97 on 5 February 1997 to the High Commissioner/Centre for Human Rights (hereinafter the Centre), stating the following:

(a) The Government of the Federal Republic of Nigeria has accepted to receive the two Special Rapporteurs on a joint mission to Nigeria from 23 February to 5 March 1997. In arriving at the above period for the visit, the Government took into consideration the initial request for an extended visit of 14 days. The rapporteurs are expected to arrive on 23 February and depart on 5 March 1997.

(b) The Government of Nigeria regrets its inability to accede fully to the latter request owing to other prior commitments and engagements. Indeed, the Government had been committed to receive the African Commission on Human and Peoples Rights, precisely during the period latterly proposed by the

Special Rapporteurs, but has had to shift the visit of the African Commission to a later date in order to accommodate the Special Rapporteurs. It is also pertinent to point out that the Government has scheduled nationwide local government elections, on a party basis, in furtherance of our country's transition to civil rule programme.

(c) In accepting to receive the visitors, the Government has taken due note of the clarifications and assurances received from the two Special Rapporteurs as conveyed to the Government by the High Commissioner/Centre for Human Rights on the concern expressed about their impartiality. The Government has also noted the intention of the High Commissioner/Centre for Human Rights to send an advance party. We welcome that. Further, the proposed places to be visited and the officials to meet with have been noted.

(d) The Government of the Federal Republic of Nigeria expects to receive confirmation of the visit and the travel plans of the Special Rapporteurs, as soon as possible.

5. In a letter dated 7 February 1997, the Special Rapporteur on the independence of judges and lawyers informed the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office in Geneva that he and his colleague, the Special Rapporteur on extrajudicial, summary or arbitrary executions, were pleased to accept the invitation of the Government. In that letter, he proposed an itinerary for the visit, reiterating the request contained in the aide-memoire to visit Lagos, Abuja, Port Harcourt, Kano and Kaduna. In order to maximize the use of the limited time available to them in Nigeria, he proposed that the mission should divide into two teams that would undertake simultaneous visits to Port Harcourt and Kano/Kaduna. He also requested an agenda of meetings organized by the Government, making reference to the list of officials contained in the annex attached to the aide-memoire presented to the Nigerian delegation on 14 January 1997. He also reiterated the Special Rapporteurs' request that meetings with officials be scheduled in the morning, thereby leaving the afternoons free for meetings with non-governmental organizations and private individuals, as well as for visits to prisons. In that regard, he noted that a complete list of the detainees whom they would like to meet would be transmitted during the course of the following week.

6. In Note Verbale 47/97 dated 12 February 1997, the Permanent Mission responded to the letter dated 7 February 1997 from the Special Rapporteur on the independence of judges and lawyers. While noting with approval the arrival dates of the advance party, the Permanent Mission wished to address the following issues:

"(a) As to the cities which the Special Rapporteurs requested to visit, the Government of Nigeria has no objection. Similarly, the intention of the Special Rapporteurs to split at some point is also noted. However, the Mission wishes to recall that in its Note Verbale No. 262/96 of 18 October 1996, it was stated that decisions about the Special Rapporteurs' itinerary, places and persons to visit 'should be a matter to be mutually agreed'. This position was acknowledged by the Special

Rapporteurs in their letter No. G/SO 214 (3-3-/) of 18 October 1996, recognizing that 'specific details of the mission, such as the locations and officials to be visited, are matters which must be mutually agreed upon'.

"(b) Therefore, while noting the proposed itinerary of the Special Rapporteurs, the Government of Nigeria is of the view that such issues should be matters to be mutually agreed, upon the Special Rapporteurs' arrival in Nigeria.

"(c) As to the officials the Special Rapporteurs wish to meet, the Government of Nigeria wishes to draw to their attention that Abuja is its Federal Capital Territory and the seat of the Federal Government. Thus, Abuja will be the venue of all such meetings. The Special Rapporteurs may, therefore, wish to report to the Federal Capital Territory on their arrival and at the conclusion of their mission, before departing for their destinations via Lagos.

"(d) While assuring the Special Rapporteurs full cooperation, the Government of Nigeria stands ready to extend the necessary courtesies to them in order to facilitate the mission ..."

7. In a note verbale dated 13 February 1997, in response to Note Verbale 47/97 from the Permanent Mission, the Centre informed the Permanent Mission that the Special Rapporteurs welcomed the opportunity to meet with federal officials on their arrival and at the conclusion of their mission. Accordingly, the Special Rapporteurs proposed that they should hold meetings with federal officials in Abuja on 24 and 25 February and at the conclusion of their mission on 5 March.

8. Further, as a follow-up to the letter of 7 February 1997 from the Special Rapporteur on the independence of judges and lawyers, the Centre transmitted to the Permanent Mission a list of the detainees with whom the Special Rapporteurs wished to meet during their mission to Nigeria, thereby enabling the Government of Nigeria to make the necessary arrangements for these meetings. It was also stated in the note verbale that the Special Rapporteurs might provide additional names of detainees during the course of the mission. The list transmitted to the Permanent Mission contained the following names: Chief Moshood Abiola; Chris Anyanwu; Kunle Ajibade; Ben Charles-Obi; Dr. Beko Ransome-Kuti; Shehu Sani; General Olusegan Obasanjo; Colonel Lawan Gwadabe; Colonel R.S.B. Bello-Fadile; Major-General Shehu Musa Yar' Adua; Rebecca Onyabi Ikpe; Sanusi Mato; Dr. Frederick Fasheun; Chief Olu Falae; Frank Kokori; and the 19 Ogoni prisoners held in Port Harcourt (the list contained the names of these 19 detainees).

9. On 19 February 1997, pursuant to a recommendation of the Special Rapporteurs, which had been welcomed by the Government of Nigeria, a human rights officer from the Office of the High Commissioner/Centre for Human Rights travelled in advance of the Special Rapporteurs to Lagos to arrange the logistical details of the visit with government officials and non-governmental organizations. It should be recalled that in Note Verbale 47/97 from the Permanent Mission, referred to in paragraph 6 above, it was acknowledged that the human rights officer would arrive in Lagos on 19 February. Further, the Resident Representative of the United Nations Development Programme (UNDP) in

Lagos also informed the Ministry of Foreign Affairs by a note verbale dated 19 February that the human rights officer would arrive in Lagos on 19 February. However, despite the Government's acceptance of the recommendation for an advance party and its acknowledgment of the date of arrival in Lagos, it neither requested nor organized any meetings with the advance party.

10. In the absence of meetings with the Government, the advance party met with officials of UNDP and the United Nations Information Centre in Lagos, as well as with a limited number of non-governmental organizations and private individuals with whom the Special Rapporteurs wished to meet following their arrival. The purpose of the advance party's meetings with non-governmental organizations was to receive background information and tentatively to organize meetings for the Special Rapporteurs based upon their anticipated itineraries. The representatives of NGOs with whom the advance party met on 20 and 21 February included representatives of the Civil Liberties Organization, representatives of the Nigerian Bar Association and Chief Gani Fawehinmi.

11. The advance party also took cognizance of various reports that were appearing in the local newspapers in Lagos concerning the visit of the Special Rapporteurs. These reports stated that the Special Adviser to the Head of State on Legal Matters, Dr. Anwalu Yadudu, had announced on 19 February that the mandate of Special Rapporteurs did not extend to meeting detainees. Dr. Yadudu was quoted as stating: "The team visits all countries. It has nothing to do with human rights abuses and I should state that the team's mandate is restrictive and specific".

12. Based upon these press reports, the Special Rapporteurs immediately expressed their concern by transmitting a fax dated 20 February 1997 to the Permanent Mission in which they sought clarifications and assurances that their visit to Nigeria would take place in accordance with the terms agreed upon after consultations between the Nigerian delegation headed by the Special Adviser (Legal Matters) to the Head of State, and the High Commissioner/Centre for Human Rights. In particular, they wished to receive clarification that they would have access to Chief M.K.O. Abiola and to the 19 Ogoni detainees. In this connection, the Special Rapporteurs drew the Permanent Representative's attention to Note Verbale No. 18/97, dated 20 January 1997, addressed to the High Commissioner/Centre for Human Rights, in which the Permanent Mission inter alia affirmed, with regard to the Special Rapporteurs interviewing detained persons, that "there is no objection", merely indicating that more information, particularly on the time and date of the interviews, was needed for further action to be taken. The two Special Rapporteurs expressed the hope that the newspaper clippings did not fully reflect the real attitude of the Nigerian authorities towards their visit, and that the requested assurances be provided to them prior to their departure for Nigeria.

13. The Resident Representative of UNDP in Lagos also conveyed this message to the Government of Nigeria by a telephone call to the Special Adviser (Legal Matters) of the Head of State. According to the Resident Representative, the

Special Adviser stated that the press reports were not accurate and that the Government remained flexible with regard to the issue of meetings with detainees. The Special Adviser also emphasized that the Government wished to cooperate fully with the Special Rapporteurs.

14. By Note No. 57/97 dated 21 February 1997, the Permanent Mission responded to the Special Rapporteurs' fax of 20 February as follows:

> "The Government of the Federal Republic of Nigeria wishes to state that the visit of the Rapporteurs will be in accordance with terms agreed upon following the consultations held with the staff of the Centre for Human Rights on 14 January 1997, and further correspondence over the matter, particularly our Note No. 47/97 of 12 February 1997.
>
> "It should be observed that, at no time, was any agreement reached as to which detainees the Special Rapporteurs would meet. In fact, at the meeting with [a representative of the Secretariat] on 14 January 1997 in Geneva, he presented an aide-memoire which contained a list of officials and persons, and not detained persons, they would wish to meet. During that meeting and in subsequent correspondence over the matter, Nigeria merely noted their request without indicating any commitment.
>
> "Regarding the Mission's Note Verbale No. 19/97 of 20 January 1997 to the High Commissioner/Centre for Human Rights, the affirmation that '**there is no objection**' appeared to have been quoted out of context because the Note under reference related to the aide-memoire, which contained no list of any detainees. The other occasion on which Nigeria expressed 'no objection' was in its Note Verbale No. 47/97 at paragraph 2 (a), namely, '... **as to the cities which the Special Rapporteurs requested to visit, the Government of Nigeria has no objection**'. The Note further added that as to the Special Rapporteurs' itinerary, places and persons to visit, this should be a matter to be mutually agreed.
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> "The list of detainees that the Rapporteurs would wish to meet was received on 18 February 1997 in the Centre's letter No. G/SO 214 (3-3-7). The list has been noted and is being considered by the appropriate authorities. While noting some discrepancies between the list and the content of the Centre's unnumbered letter of 20 February 1997, which specifically requested clarification as to whether or not the Special Rapporteurs would have access to '**Chief M.K.O. Abiola and the 19 Ogoni detainees**', for the avoidance of doubt, a formal request should be made as to precisely which detainees they would wish to meet. Nevertheless, the Special Rapporteurs are assured that their request will be duly considered and strictly in accordance with their mandate.
>
> "The Centre may wish to note that Mr. Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, was widely quoted by the Nigerian press to have asserted, as the attached Nigerian Guardian newspaper report of Tuesday, 11 February 1997 indicated, that 'the Federal Government has acceded to a request by

the United Nations Human Rights Investigators to meet with political detainees, Moshood Abiola and jailed former Head of State, General Olusegan Obasanjo ... Olabiyi Durojaiye, Olu Falae ...'. He was reported to have made this disclosure in an interview he granted to Voice of America (VOA) on Monday, 10 February 1997 during its 'Daybreak Africa' programme. There has not been any such agreement.

"The Federal Government of Nigeria wishes to state further that as a responsible government, it does not conduct its policy on the pages of newspapers. We wish to reassure the Special Rapporteurs of our full cooperation and support. The Special Rapporteurs would have access to, and could meet with, any groups or individual during the period they have requested to be set aside in the programme."

15. On the afternoon of 22 February 1997, the advance party met with representatives of the Ministry of Foreign Affairs in Lagos. At this meeting, the advance party informed the representatives that the Special Rapporteurs had found the clarifications and assurances contained in Note No. 57/97 unsatisfactory and that they would delay their arrival in Nigeria until they received assurances that they would be allowed to meet the detainees whose names had been transmitted to the Government in the note verbale from the High Commissioner/Centre for Human Rights dated 13 February 1997. The representatives of the Ministry of Foreign Affairs reiterated the request contained in Note No. 57/97 that the Special Rapporteurs should make a formal request, indicating precisely which detainees they would wish to meet.

16. After consulting with the two Special Rapporteurs, the advance party handed the following letter to the representatives of the Ministry of Foreign Affairs reading as follows:

"In response to Note Verbale 57/97 dated 21 February 1997 from the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva, which called for the Special Rapporteurs to make a formal request as to precisely which detainees they should wish to meet, the Special Rapporteurs have instructed me to inform the Government of Nigeria that they wish to have access to the following individuals during the course of their visit to Nigeria: [the names contained in the list transmitted to the Permanent Mission in the note verbale dated 13 February were reproduced in their entirety]

"The Special Rapporteurs would once again like to draw your attention to the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, which provide inter alia that special rapporteurs should be given guarantees and facilities by the Government which invited them to visit the country as to 'freedom of inquiry, in particular as regards: (a) access to all prisons, detention centres and places of interrogation ... (d) contact with witnesses and other private persons considered necessary in fulfilment of the mandate ...'.

"The Special Rapporteurs also wish to recall the aide memoire that was presented to the delegation which met with officers from the Centre for Human Rights on 14 January 1997. In paragraph 5 of this aide memoire, the Special Rapporteurs requested 'the Government to provide access to prisons and/or places of detention of inter alia the 19 Ogoni who are awaiting their trial before the Civil Disturbances Tribunal, in addition to 43 persons who were tried and convicted in 1995 by the Special Military Tribunal'. The Special Rapporteurs also note that Note Verbale 06/97 dated 15 January 1997 from the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva also makes reference in paragraph 15 to the fact that the Secretariat told the delegation that the Rapporteurs would also wish to interview a number of detained persons, whose cases they considered to be relevant to their respective mandates, including the 19 Ogonis and the 43 others who were tried and convicted in 1995 by the Special Military Tribunal.

"Further, in Note Verbale 18/97 dated 20 January 1997, which contained the preliminary reaction of the Permanent Mission to the aide memoire, paragraph (g) concerning detained persons clearly indicated that 'there is no objection' on the part of the Government.

"Subsequently, in a note verbale dated 13 February 1997, the High Commissioner/Centre for Human Rights transmitted a list containing the names of detainees with whom they wish to meet during their mission to Nigeria, which are the same names as those mentioned above.

"In the view of the Special Rapporteurs, these communications left no doubt as to which detainees they wished to meet. Further, the Government's acceptance of the Terms of Reference and the affirmation contained in Note Verbale 18/97 that 'there is no objection' to interviewing detained persons do in fact constitute an agreement on the issue. Accordingly, the Special Rapporteurs are troubled that Note Verbale 57/97 states that 'there has not been any such agreement' and that 'their request [to have access to Chief M.K.O. Abiola and the 19 Ogoni detainees] will be duly considered and strictly in accordance with their mandate'.

"While welcoming the assurances of the Government that they have its full cooperation and support and that they would have access to, and could meet with, any groups or individuals during the period they have requested to be set aside in the programme, the Special Rapporteurs nevertheless still seek explicit assurances from the Government that they will be granted access to the above-mentioned detainees. Without such assurances, in writing, ... the Special Rapporteurs are not prepared to travel to Nigeria."

17. On 23 February 1997, the representatives of the Ministry of Foreign Affairs requested the advance party to travel to Abuja to discuss these issues with federal officials. The advance party agreed to this request in the hope

of resolving the dispute so that the mission could go forward. However, he emphasized that he did not have the authority to negotiate issues of principle, in particular whether the Special Rapporteurs would be given access to detainees. Indeed, in the view of the Special Rapporteurs, they themselves did not have the authority to negotiate the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights. What the advance party could do was provide an explanation as to why the Special Rapporteurs considered access to particular detainees important for fulfilling their respective mandates, and negotiate the logistics of the visit, i.e. when and where the Special Rapporteurs would meet the detainees.

18. On 24 February 1997, the advance party met with two representatives of the Ministry of Foreign Affairs to discuss the issue of access to detainees. The representatives sought clarification on the list of detainees submitted to the Government and its conformity to their mandates. The representatives underlined the distinction the Government made between what constituted detention and imprisonment, in contrast to the general term "detainee" used by the Special Rapporteurs. They also stated that the inclusion of convicts whose cases had been settled under existing Nigerian law was beyond their concern, as they were outside the scope of their mandates.

19. In response, the advance party explained that the term "detainee" as contained in the standard terms of reference for fact-finding missions of special rapporteurs referred to anyone deprived of his or her liberty, including those convicted and sentenced by a court of law. He also pointed out that during their in situ missions, in accordance with the standard terms of reference, virtually all special rapporteurs, both thematic and country-specific, routinely visited prisons and places of detention to meet detainees whose rights allegedly had been violated. More specifically, the two Special Rapporteurs concerned, had both met with detainees during missions to Colombia, Indonesia, East Timor, Burundi and Rwanda. Moreover, on those missions they had regularly met with a broad range of people, such as religious or traditional leaders, community leaders and members of civic organizations even though their respective mandates were not directly related to the specific issues of concern to those individuals or organizations. Therefore, the Special Rapporteurs were of the view that the principles of impartiality and non-selectivity dictated that they must not compromise, vis-à-vis their visit to Nigeria, the guarantees established under the standard terms of reference that granted them access to prisons, detention centres and places of interrogation and contact with witnesses and other private persons considered necessary in fulfilment of their mandate.

20. The advance party also explained that while it was true that thematic rapporteurs had mandates that focused on specific thematic questions, they were nevertheless rapporteurs of the Commission on Human Rights and must place the specific thematic question they were investigating within the context of the overall human rights situation in a country. In the case in question, that was even more relevant owing to the fact that the Special Rapporteurs were mandated to report to the Commission pursuant to a resolution entitled "The situation of human rights in Nigeria".

21. The advance party also emphasized, however, that the Special Rapporteurs were of the opinion that the reasons for requesting visits to the detainees on the list transmitted to the Government concerned issues that fell clearly within the scope of their respective mandates. On the one hand, the Special Rapporteur on the independence of judges and lawyers considered it necessary to meet all those who were reported to have been affected by the alleged flawed judicial system in order to realize the objective of his mandate. Foremost among such people were those who had stood accused before the system and had been convicted and sentenced, and those who were languishing in detention centres awaiting their trials before such a system. Issues of concern included the establishment of ad hoc tribunals, alleged interference in the judicial process by the executive, undue delays in the judicial process and lack of access to counsel for defendants. On the other hand, the Special Rapporteur on extrajudicial, summary or arbitrary executions considered it important that he should meet those who had been detained on charges of murder and who might be subjected to the death penalty, as in the case of the 19 Ogoni detainees. Further, he had received numerous allegations of deaths in prison and places of detentions and, therefore, considered it important that he should visit such places. More importantly, there were allegations that those detainees whose names had been provided on the list transmitted to the Government included individuals whose lives were at risk because of the harsh conditions to which they had been subjected in detention, and that the Government had failed to provide adequate medical care to those individuals.

22. He also noted that the Special Rapporteur on the independence of judges and lawyers had repeatedly stated in his reports to the Commission on Human Rights and in speeches to various bodies, that an independent and impartial judiciary could only flourish in a democratic setting. Part I, paragraph 27 of the Vienna Declaration and Programme for Action 1993 supported that view. Consequently, he was of the view that his mandate extended to reporting on the programme of transition to democracy in Nigeria.

23. In response, the Nigerian representatives expressed their view that the mandate of the Special Rapporteur on the independence of judges and lawyers was not an all-inclusive investigatory mission that extended to the transition programme of the Government. They noted that such desires of special rapporteurs had always been the subject of virulent debates and even acrimony at the Commission on Human Rights. The interference in domestic affairs implicit in the attempt by the Special Rapporteurs to investigate the transition programme would be inconsistent with the mandates of both Special Rapporteurs, and as such, would not be acceptable to the Government. They added that the transition process was on course and what was expected at that particular point was a positive contribution from home and abroad, including from the Special Rapporteurs, to a successful conclusion of the laudable efforts of the Government to establish a durable democratic system in Nigeria.

24. Regarding the issue of lack of access to counsel and delayed judicial process, especially with regard to Chief Abiola, one representative pointed out that the claim did not reflect the true situation. He noted that Chief Abiola, from the beginning of his trial had freely appointed a counsel of his choice in the person of Chief G.O.K. Ajayi. However, owing to some

unexplained family squabbles, the issue of legal representatives had become a problem, as some members of the family had decided to appoint another counsel, in the person of Chief Rotimi Williams, to replace the one already handling the case, who, as indicated had been appointed at the instance of Chief Abiola. However, earlier in September 1994, Chief Ajayi as Abiola's counsel had requested and had been granted a stay of the proceedings. Those were the causative factors of the delay in the case.

26. On the issue of detainees, particularly the "Ogoni 19", the advance party was informed that the Government was seized of the matter and appropriate consideration was being given to the subject.

27. The advance party then emphasized that the Special Rapporteurs were requesting, as a matter of principle, assurances in writing, that they would be able to meet with all the people on the list submitted to the Government. He also provided the names of two additional detainees with whom the Special Rapporteurs wished to meet, Chief. O. Durojaiye and Mr. Godwin Agbroko. He said that the Special Rapporteurs recognized that logistically it might be impossible to meet with all the individuals on the list, given the fact that the detainees were dispersed throughout the country, but in principle the Government needed to accept the standard terms of reference before the Special Rapporteurs undertook the visit.

28. The government representatives reiterated that Nigeria was open to further dialogue on those issues, as evidence of the Government's commitment to the visit. It was, however, emphasized that all cases already settled under existing laws of Nigeria were beyond the mandates of the Special Rapporteurs. The point was made unequivocally that it would be unacceptable for the Special Rapporteurs to examine in the course of the visit matters falling outside the jurisdiction of their mandates.

29. The advance party replied that the Special Rapporteurs would agree that they must carry out their activities pursuant to the mandates they had been given by the Commission on Human Rights. He also reiterated the position of the Special Rapporteurs that they were not prepared to travel to Nigeria unless they were given assurances that they would be granted access to the detainees they had requested to meet.

30. At this point the meeting was adjourned for consultations. It was reconvened in the afternoon, at which time the representatives presented the advance party with a letter from the Protocol Officer of the Ministry of Foreign Affairs containing the Government's response to the letter dated 22 February in which the Special Rapporteurs sought explicit assurances that they would be granted access to detainees they had requested to meet. This letter of response, dated 24 February, states:

> "Since the receipt of the said letter [of 22 February] you are well aware that Nigerian officials have been in constant and formal consultations with you upon your movement from Lagos to Abuja on Sunday, February 23, 1997. During these consultations Nigeria has explained fully its position that we are unable to permit, as a pre-condition for the visit, access to certain

identified categories of persons who have either been duly convicted by tribunals established by domestic laws and serving prison terms or have been remanded on court orders. This has arisen from our understanding of the mandate of the Rapporteurs as derived from the enabling resolutions, the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, existing practice and the emerging human rights jurisprudence governing similar missions. Be that as it may, Nigeria agrees to permit the Rapporteurs to have access to the '19 Ogoni detainees' as per their request in both the [advance party's] letter under reference and the unnumbered letter from the Centre of Human Rights dated 20 February 1997.

"In conclusion, may I reiterate Nigeria's resolve to fully cooperate with the Rapporteurs so as to make their joint mission a success. We also wish to reiterate earlier assurances given, namely that they will have access to any individuals or groups whom they wish to meet with in the fulfilment of their mandate. Nigeria is satisfied that we have invested so much towards the preparation for this joint investigative mission and that there is much more to it than meetings with any particular individual to warrant aborting or postponing it on account of lack of agreement as to the precise extent of the mandate of the Rapporteurs on this issue."

30. Based upon this response, the Special Rapporteurs felt they had no choice but to cancel the visit scheduled for 23 February to 5 March. This decision was conveyed orally to representatives of the Ministry of Foreign Affairs on 24 February by the advance party and in a note verbale dated 27 February transmitted by the Centre for Human Rights to the Permanent Mission.

31. In the view of the Special Rapporteurs, the basis for the Government's decision to deny access to a certain class of detainees is not only an unacceptable interpretation of their respective mandates, but, more importantly, is contrary to the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, which call upon the concerned Governments to give, inter alia, guarantees on freedom of movement and freedom of inquiry **in particular as regards: (a) access to all prisons, detention centres and places of interrogation ... (d) contact with witnesses and other private persons considered necessary in fulfilment of the mandate** (emphasis added). Further, in the view of the Special Rapporteurs, there had in fact been an agreement on the issue. In the aide-mémoire presented to the Government by the High Commissioner/Centre for Human Rights to clarify its concerns about the standard terms of reference, and in the meeting held between the Secretariat and representatives of the Government on 14 January, the Special Rapporteurs made known their desire to meet with detainees, in particular those sentenced and convicted in the 1995 trial of coup plotters, and the 19 Ogoni. At no point during this meeting or in subsequent correspondence did the Government indicate that it did not accept the standard terms of reference. More

specifically, it never indicated that it considered it outside the scope of the respective mandates of the Special Rapporteurs to meet with detainees. While it is true that Note No. 19/97 stated that "more information, particularly on the time and date of the interviews is needed for further relevant action to be taken", the Special Rapporteurs did not interpret this as an indication that the Government had reservations on this issue. To the contrary, the note stated unequivocally: "there is no objection". Of course, the time and place of such meetings had to be arranged, but the Special Rapporteurs had anticipated that the advance party would be able to make such logistical arrangements. The Special Rapporteurs consider it an act of bad faith on the part of the Government to announce on the eve of their arrival that they would not be allowed to meet certain detainees. The Government argues that there is much more to the visit than "meetings with any particular individuals". However, some of these individuals are among the most important political leaders of the country. The Special Rapporteurs would also note that in its resolution 51/109 the General Assembly expressed concern that "persons in detention in Nigeria continue to face a flawed judicial process", thereby giving support to the position of the Special Rapporteur on the independence of judges and lawyers that it is necessary for him to meet all those who are alleged to have been affected by the alleged flawed judicial system in order to realize the objective of his mandate. It should also be recalled that the Commission on Human Rights in its resolution 1996/79 expressed its deep concern about violations of human rights and fundamental freedoms in Nigeria and called upon the Government of Nigeria urgently to ensure their observance, in particular by restoring habeas corpus, **releasing all political prisoners, trade union leaders, human rights advocates and journalists who are at present detained**, guaranteeing freedom of the press and ensuring respect for the rights of all individuals, including persons belonging to minorities. Therefore, the Special Rapporteurs cannot accept a conditional invitation from the Government of Nigeria that does not permit them to meet with detainees.

32. It should be recalled that the Special Rapporteurs first requested permission to visit Nigeria in November 1995 prior to the adoption of Commission resolution 1996/79. Since that time the Special Rapporteurs have proposed numerous dates for the visit and on two occasions definitive dates had been proposed by the Government. On each occasion the visit was delayed, although the reasons for the delay put forward by the Government have varied. First, the Government indicated that the timing of the visit was not convenient and thus it could not accept the dates proposed for July 1996 by the Special Rapporteurs. The issue of timing was also invoked as a reason not to accept the dates proposed by the Special Rapporteurs for November 1996, at which time the Government also questioned the length of the visit proposed by the Special Rapporteurs. Then the Government, following the issuance of their interim report to the General Assembly, questioned the integrity and impartiality of the two Special Rapporteurs. Finally, the Government questioned the standard terms of reference, although it should be noted that until the eve of their scheduled arrival in February 1997 the Government never questioned the right of the Special Rapporteurs to have access to detainees; it merely stated that it needed further information on the logistics of the meetings.

33. The Government of Nigeria maintains that it has cooperated fully with the Commission on Human Rights. Note No. 68/97 dated 28 February 1997 from the Permanent Mission to the Centre sets forth the reaction of the Government to the cancellation of the visit:

"The Government of the Federal Republic of Nigeria expresses its dismay at the sudden decision of the two thematic Special Rapporteurs to cancel their visit, despite the assurances of its full cooperation and support to ensure the success of the visit.

"Further to the Permanent Mission's Note No. 47/97 of 12 February 1997, the Government had stated that outstanding issues pertaining to the request to visit certain individuals would be discussed and mutually agreed, upon the arrival of the Special Rapporteurs.

"Accordingly, the Government of Nigeria had expected the thematic rapporteurs to embark upon, and continue with, the mission while efforts were made to resolve the outstanding issues. This would have enabled the thematic Special Rapporteurs to hold dialogue with Government about its efforts to implement obligations under relevant human rights instruments to which Nigeria is a party.

"Had the thematic Special Rapporteurs cooperated or directly held prior consultations with the Government of the Federal Republic of Nigeria over the outstanding issues, the need would not arise for them to submit a report on the situation of human rights in Nigeria to the Commission on Human Rights at its fifty-third session, which would now be based entirely on information from third party sources, and which would not take into account the views of the Government of the Federal Republic of Nigeria.

"Moreover, the abrupt cancellation of the visit failed to take into account the efforts made by both the Federal Government of Nigeria and the advance party of the two thematic Special Rapporteurs, who spent five days in Nigeria making arrangements for the visit with NGOs, individuals and officials of the Ministry of Foreign Affairs. It should be recognized that efforts and resources were invested by the Government of Nigeria, the thematic Special Rapporteurs and the Centre for Human Rights towards making the visit a success. Therefore, more plausible reasons would be needed to warrant the cancellation.

"Nevertheless, the Government of the Federal Republic of Nigeria reaffirms its decision to continue its cooperation with the thematic Special Rapporteurs and to renew its invitation to them to undertake the mission, pursuant to resolution 1996/79 of the fifty-second session of the Commission on Human Rights.

"The Permanent Mission requests that this Note, and other relevant written reaction of the Government of Nigeria to the report which the thematic Special Rapporteurs may present, be published as

part of the background document of the Commission on Human Rights at its fifty-third session, under agenda item 10 dealing with the situation of human rights in Nigeria."

34. The Special Rapporteurs would submit that the Government has been well aware of their position of principle that it must accept unconditionally the standard terms of reference for fact-finding missions of special rapporteurs prior to their undertaking the visit. The Government states that it has provided assurances of "its full cooperation and support to ensure the success of the visit", but its refusal to guarantee access to detainees, as required by the standard terms of reference, demonstrates otherwise. The principle of non-selectivity and impartiality dictates that the Special Rapporteurs cannot accept the conditions which the Government has established for the visit. If the Special Rapporteurs were to compromise this principle and accept the conditions established by the Government of Nigeria, they would be doing a disservice to the entire special procedure system.

35. The mandate of the Special Rapporteur on the independence of judges and lawyers not only includes inquiries and identification and recording of attacks on the independence of judges and lawyers, but also investigation on progress achieved in protecting and enhancing their independence. The Special Rapporteur therefore considered that it was imperative for him to inquire into the extent of implementation of the Government's proposed programme for transition to democracy in order to report on its impact on protecting and enhancing judicial independence in Nigeria.

36. Further, the Special Rapporteur on the independence of judges and lawyers had received numerous allegations that many individuals had been detained and continued to be detained either upon conviction or remand by alleged seriously flawed judicial process before tribunals which did not conform with universally accepted norms. Some of these norms are: article 14 of the International Covenant on Civil and Political Rights; articles 6 and 7 of the African Charter on Human and People's Rights; Principles 5, 6, 7 and 8 of the Basic Principles on the Role of Lawyers. The Special Rapporteur considers that a tribunal which disregards these norms or is prevented from applying them cannot possibly be deemed as independent and impartial.

37. After the trial, conviction and execution of Ken Saro Wiwa and eight other Ogonis by a flawed tribunal and the Government's implicit admission of such, it is difficult for the same Government to disregard these allegations outright. Inquiry by the Special Rapporteurs into these allegations without their first meeting with the detainees, or at least some of them, directly affected by such alleged flawed judicial tribunals would have seriously affected the integrity of the resulting report of the Special Rapporteurs. The very concern of the Government of Nigeria expressed in Note No. 68/97 dated 28 February 1997 that the Special Rapporteurs were going to submit a report to the Commission at its fifty-third session "based entirely on information from third party sources and which would not take into account the views of the Government of the Federal Republic of Nigeria" could, conversely, have been expressed by the detainees and all those concerned if the Special Rapporteurs had proceeded with the mission and met just with government officials and not with the detainees. In the circumstances, the

Government's contention that detainees "convicted by tribunals established by domestic laws ... or remanded on court orders" are no concern of the Special Rapporteurs is wholly unacceptable.

38. A compromise with the Government of Nigeria on these fundamental principles would have seriously undermined, eroded and adversely affected the integrity of the special procedure system established by the Commission. The Special Rapporteurs would have done a grave injustice to the several procedures, both thematic and country, under this system if they had compromised on the standard terms of reference for fact-finding missions of special rapporteurs and proceeded with the mission.

II. VIOLATIONS OF HUMAN RIGHTS

A. Extrajudicial, summary or arbitrary executions

39. Section 30 (1) of the Constitution of the Federal Republic of Nigeria, of 1979 provides that "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria". However, section 30 (2) provides that "a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary - (a) for the defence of any person from unlawful violence or for the defence of property; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny".

40. It is of concern to the Special Rapporteurs that the very provision within the Constitution that is intended to guarantee this fundamental right actually gives the security forces sweeping powers to derogate from the right. The Special Rapporteur recognizes that the security forces must be given some discretion in the exercise of their duties to maintain law and order, but the law must be strictly defined and narrowly interpreted. The use of broad and general language in the Constitution does not adequately control and limit the circumstances in which a person may be deprived of his life by the security forces. It is particularly disturbing that the Constitution allows for the use of lethal force for the defence of property. The Special Rapporteurs are also concerned that section 30 (1) states that "no one should be deprived **intentionally** of his life ...". In the opinion of the Special Rapporteurs, the Constitution should be consistent with the language of article 6 of the International Covenant on Civil and Political Rights and should use the term "arbitrarily", which has a broader connotation than "intentionally".

41. The Special Rapporteur on extrajudicial, summary or arbitrary executions has been reporting to the Commission on Human Rights for the past several years on the serious allegations he has received pertaining to Nigeria. For example, in 1995, the Special Rapporteur transmitted to the Government of Nigeria 14 cases of alleged extrajudicial, summary or arbitrary executions of over 200 persons. The majority of these allegations related to killings by the security forces (see E/CN.4/1996/4, paras. 338-357). In their interim report to the General Assembly at its fifty-first session (A/51/538), the

Special Rapporteurs reported on allegations received during 1996. Since the finalization of the interim report, the Special Rapporteurs have continued to receive serious allegations concerning killings by the security forces. On the basis of the information received during the past several years, a general pattern has emerged that demonstrates three categories in which the majority of extrajudicial, summary or arbitrary executions may be placed: (i) victims killed in police custody; (ii) victims killed while attempting to avoid being stopped or arrested by the police; and (iii) victims killed when security forces indiscriminately fire upon demonstrators.

42. In the first category, the Special Rapporteurs have received numerous allegations about the use of torture that results in death, or extrajudicial, summary or arbitrary execution by the police following the arrest and/or detention of criminal suspects. In these reported cases, the police beat to death the suspect or arbitrarily execute the suspect by shooting him or her at close range. These reports demonstrate that there is an urgent need for the law enforcement authorities to receive training on the Standard Minimum Rules on the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

43. In the second category, the police or security forces shoot the victims as they attempt to avoid being stopped or arrested. These cases frequently occur at police checkpoints when the victims refuse to obey police orders to stop. In both the first and second categories, the police invariably claim that the victims were armed robbery suspects. Irrespective of the veracity of these claims, the frequency of deaths at the hands of the police or security forces demonstrates that there is an urgent need for law enforcement officials to be trained in the use of force and firearms to minimize damage and injury, and respect and preserve human life.

44. The third category of cases involves the indiscriminate use of force by the police or security officers to break up demonstrations. During the past year alone, there have been several reports of demonstrators being killed when the police or military fired upon the crowd to disperse the participants. For example, reports provided to the Special Rapporteurs in September 1996 indicate that dozens of demonstrators were killed in Kano and Kaduna when the police fired on demonstrators who were protesting the arrest of a well-known religious leader. In their interim report to the General Assembly, the Special Rapporteurs reported on the killings of three minors when the police intervened in non-violent demonstrations held by members of the Ogoni minority commemorating the International Day of the World's Indigenous People (A/51/538, para. 39).

45. Within this context, the ouster clauses contained in section 30 (2) of the Constitution appear to create an environment in which the security forces can act with impunity. Although section 298 of the Criminal Code provides that "Any person authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes excess", it is rare for police or security officials responsible for these killings to be prosecuted. Moreover, human rights organizations claim that no known cases of extrajudicial killings involving policemen or security officials in Nigeria have been seriously investigated with a view to bringing their perpetrators to justice. The right to life guaranteed by section 30 (1)

of the Constitution is further eroded by the numerous military decrees which absolve security agents from criminal prosecution in the exercise of their powers under such decrees.

46. The Special Rapporteurs remain concerned that the death penalty may be applied following hearings before ad hoc tribunals. These tribunals are composed of members appointed on an ad hoc basis by the Head of State or the Ruling Provisional Council. There are also numerous allegations that the hearings before these tribunals violate international standards on the right to a fair trial before an independent and impartial tribunal, thereby violating article 14 of the International Covenant on Civil and Political Rights and the Safeguards guaranteeing protection of the rights of those facing the death penalty. Further, under many of the decrees establishing the special tribunals, there is no right of appeal. The Special Rapporteurs welcome the decision of the Government to implement the recommendation of the fact-finding mission of the Secretary-General to allow for appeal against a decision of the Civil Disturbances Tribunal. They note that the appeal is to a special, ad hoc appellate tribunal whose members are also appointed by the Head of State. The Special Rapporteurs would also point out that, to their knowledge, the implementation of this recommendation does not extend to other special tribunals, but applies only to the Civil Disturbances Tribunal.

47. The Special Rapporteurs have also received alarming allegations of the deaths of scores of detainees owing to the harsh conditions in prisons and other places of detention, and to the subsequent lack of provision of adequate medical attention to the detainees. To the extent that the Government does not take corrective measures to improve the unacceptable conditions and/or knowingly denies medical care to detainees who are suffering from serious health problems, the Government's lack of action may be considered a violation of the right to life.

48. The Special Rapporteurs are also concerned that the Government of Nigeria has not adequately addressed the problem of communal violence that exists within various regions of the country, such as the religious conflicts in the north of the country and the civil unrest in Ogoniland. The Government must take preventive measures to avoid further incidents of communal violence.

B. Independence of judges and lawyers

1. Erosion of the Constitution

49. The military revolution which took place on 17 November 1993 effectively abrogated the whole pre-existing legal order in Nigeria except for what has been preserved under Constitution (Suspension and Modification) Decree No. 107 of 1993. Pursuant to Decree 107 of 1993 the Federal Military Government was established with absolute powers to make laws "for the peace, order and good government of Nigeria". In exercise of that power the Federal Military Government permitted certain provisions of the Constitution of 1979 to remain in operation. Among those retained was section 6 of the 1979 Constitution which vests the judicial power in the courts.

50. The effect of the retention of section 6 was severely diluted by section 3 (3) of the same Decree No. 107, which provides that "provisions

of a Decree shall prevail over those of the unsuspended provisions of the said 1979 Constitution". Thus, the supremacy of the Constitution was ousted.

51. Pursuant to section 3 (3) of Decree No. 107, the Federal Military Government, by (Supremacy and Enforcement of Powers) Decree 12 of 1994, ousted the jurisdiction of the ordinary courts over some fundamental rights issues and made the judiciary subservient to the Federal Military Government. Decree 12 provides:

> "(i) No civil proceedings shall lie or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict, and if such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void.
>
> "(ii) the question whether any provision of chapter IV of the Constitution of the Federal Republic of Nigeria 1979 has been, is being or would be contravened by anything done or purported to be done in pursuance of any Decree shall not be inquired into in any Court of law and accordingly, no provision of the Constitution shall apply in respect of any such question."

52. Chapter IV is the fundamental rights chapter in the 1979 Constitution. Decree 12 of 1994 also gives the military Government unbridled power to violate fundamental rights with impunity. There are today 39 other decrees ousting the jurisdiction of the courts.

2. Executive disobedience of court orders

53. The situation is further aggravated by governmental lawlessness in the form of refusal by the military Government and its agencies to obey court orders. This phenomenon is reportedly so rampant that some judges have simply stopped issuing orders on the military Government or its agencies because they will never be obeyed.

54. There are several ways in which the military Government disobeys court orders. In some instances, it simply ignores court proceedings or orders. In others, it will promulgate a decree nullifying a judgement or order. It is alleged that there have been instances of reprisal action being taken against judges for issuing such orders. It is also alleged that in recent times there has hardly been any instance in which the military Government has obeyed a court order. This is considered as the rudest affront to the independence of judges and the rule of law in Nigeria.

55. The following is a list of court orders reported to have been disobeyed by the Government between February 1995 and February 1997. The list is not all exhaustive:

1. Chief Frank Kokori to be produced in court;

2. Bashorun M.K.O. Abiola to be produced in court;

3. Bashorun M.K.O. to have access to his lawyers and newspapers;

4. Chief Anthony Enaboro to be produced in court;

5. Sylvester Odion-Akhaine to be produced in court;

6. Concord to be reopened;

7. African Concord to be reopened;

8. Chief Wariebi Agamene to be produced in court;

9. Guardian to be reopened;

10. Punch to be reopened;

11. Chief Gani Fawehinmi to have access to his medication;

12. National Democratic Coalition chieftains, Senator Adesanya, Chief Dawodu and Chief Adebanjo, to be produced in court;

13. Chief Durojaiye Olabiyi to be produced in court;

14. Dr. Beko Ransome-Kuti to be produced in court;

15. Dr. Fasehun to be produced in court;

16. Major General Bamaiyi to reopen a car dealer's premises.

56. Credit must be given to some of the courageous judges who have reacted most angrily over such government lawlessness.

57. In the case of Attorney-General of the Federation v. Nigerian Bar Association in 1992 Justice A.F. Adeyinka said the following:

> "The conduct of the Attorney-General and of the Federal Government of Nigeria in disobeying the Court Orders is reprehensible. The Government's disobedience of Court Orders is, in fact, destroying the basis in which lawyers can defend the rights of Nigerian Citizens which the Government is now seeking to protect by this action ... If citizens whose rights the Federal Government now seeks to protect follow the Government's bad example and refuse to obey Court Orders, it will lead not only to the disruption of the due administration of justice and the transition to the Civil Rule Programme, but also, to chaos, anarchy and the ultimate dismemberment of the Federal Republic of Nigeria."

58. In February 1996, in the case Ibrahim v. Emein, Justice Muhammad, sitting in the Court of Appeal, said:

> "I am of the firm view that for a nation such as ours, to have stability and respect for democracy, obviously the rule of law must be allowed to follow its normal course unencumbered. If, for any reason, the executive arm of government refuses to comply with court orders, I am afraid that arm is promoting anarchy and executive indiscipline capable of wrecking the organic framework of the society."

59. Also in February 1996, Justice James Oduneye, sitting in the High Court, was reported to have said in frustration when the Court's order granting an interim injunction restraining the Inspector-General of Police, the Attorney-General and the Minister of Justice from arresting or detaining Chief Akinmaghe was disobeyed:

> "I don't like my orders being flouted, no matter who is involved ... If the orders of the court cannot be complied with, the court itself should be scrapped and let us live in a country of anarchy and chaos."

3. Differential treatment in the allocation of resources to the ordinary courts and the special and military tribunals

60. It has been reported that the judges of the ordinary courts are poorly paid and conditions of service are very poor. Working facilities in these courts are simply not available. An average state High Court judge earns about US$ 60 per month and payment is irregular and uncertain. It is alleged that the Chief Justice of Nigeria is paid about 2 per cent of the salary of his counterparts paid in the United Kingdom.

61. This is in stark contrast to the situation in the special and military tribunals which are said to enjoy elite status. (Fourteen decrees have been passed creating such tribunals; for more details on these tribunals, please refer to the interim report to the General Assembly A/51/538, paras. 60 and following). These tribunals are provided with computers, machines for recording of proceedings, a public address system, qualified personnel to act as registrants, with adequate renumeration and allowances, etc. This status of the Tribunals has led to a great scramble and lobbying by judicial personnel to be appointed as chairmen or members of the tribunals. Nevertheless, those appointed to sit are not always legally qualified. Because of these facilities, proceedings in the tribunals are faster and judgements are delivered on time. The speed of their proceedings is used as a weapon to justify the existence of these tribunals and to attack the delays in the ordinary courts, and thereby undermining public confidence in them. The ordinary courts are presented as corrupt, incompetent and incapable of responding to the "military's speed and alacrity in dealing with the issues that occasioned their being set up".

4. Detentions

62. It is also learnt that a total of 70,000 people are being detained in Nigeria today either upon conviction, remand or without trial. It is further learnt that about 60 per cent of them are awaiting trial. Some have been detained as long as for 12 years without trial. Among those convicted are several people alleged to be victims of flawed judicial process in the special or military tribunals.

63. Chief Masood Abiola continues to languish in detention awaiting his appeal to the Supreme Court of the decision of the Court of Appeals on his application for bail. It is learnt that the Supreme Court is unable to hear his appeal. Of the 12 judges of the Supreme Court, eight were obliged to disqualify themselves from sitting on his appeal on grounds of possible bias.

These eight are litigants in a civil defamation suit against the Concorde newspaper group in which Chief Abiola has a substantial interest. The minimum number of judges required to form a quorum of the Supreme Court is five. It is also learnt that the number of judges of the Supreme Court has been increased to 15. Despite this, the appeal remains in the Supreme Court docket.

5. Committee on judicial reform

64. A committee of inquiry set up in 1994 to examine ways to reform the judiciary (known as the Eso Committee after its chairman, Kayode Eso, a retired Supreme Court judge) submitted its report in 1995, but there has been no response from the military Government. It is said that the committee recommended laudable measures to ensure the independence of the judiciary, including its financial and administrative autonomy.

6. The legal profession

65. The Nigeria Bar Association is the umbrella body of legal practitioners in Nigeria. The Association has a national headquarters and branches in all the state capitals and sub-branches in all judicial divisions. States have an average of three judicial divisions.

66. The Nigerian Bar Association at the national level has been in disarray since 1992. The origin of the crisis was an attempt by the Government to impose a national leadership on the association at its biannual conference in Port Harcourt. This was resisted by a majority of the members and the elections for the national executive could not be held. Subsequently, the Government issued a decree handing over the affairs of the Association to the Body of Benchers, made up of the attorneys-general of the federation and of the states, the Chief Justice of the federation and the chief judges of the states, and selected appellate judges and senior advocates. The Decree ousted the jurisdiction of the courts to question any act of the Body of Benches. It also provided that such inquiry was an offence punishable by imprisonment; that provision has been amended, however.

67. The decree has been widely criticized by lawyers and denounced by the African Commission on Human and Peoples Rights' as a breach of the independence and impartiality of the judiciary and the legal profession protected in the African Charter on Human and Peoples' Rights.

68. It is said that the military Government is bent on direct control of the Bar Association. All attempts by lawyers to reconvene the national association have been thwarted by the Government. For instance, in August 1995, lawyers representing various state branches of the association, convened a meeting in Jos to discuss ways of reconstituting the national association. The meeting was broken up by the police and the conveners arrested.

III. CONCLUSIONS AND RECOMMENDATIONS

69. Although the Special Rapporteurs were unable to examine the situation in situ in Nigeria, they wish to emphasize that the findings and recommendations of the present report are based upon Nigerian

legislation, international human rights instruments and findings of other United Nations bodies, as well as credible and reliable information from non-governmental organizations and private individuals.

70. It appears that under the military Government of Nigeria today the rule of law is on the verge of collapse, if it has not already collapsed. Among the several decrees promulgated by the military Government Decrees 107 of 1993 and 12 of 1994 sounded the death knell for any form of constitutional order in the country. Power is now vested solely in the hands of the military Government. Executive disobedience of court orders is an affront to the concept of accountability which is the essence of a democracy. It is therefore impossible for an independent and impartial judiciary to exist as an institution and for independent judges and lawyers to function and discharge their rightful roles in such an environment.

71. Judicial independence in Nigeria can only be realized if there is political will in the military Government to infuse constitutionalism into the machinery of government to respect the rule of law and to return the country to a democratic state. The separation of power and executive respect for such separation is a sine qua non for an independent and impartial judiciary to function effectively.

72. The Bar Association of Nigeria has been seriously marginalized, in violation of the Principles on the Role of Lawyers.

73. Nigeria continues to violate provisions of the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights to which it voluntarily acceded. In addition it has not respected and continues not to respect the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers. The decrees of the military Government have undermined the Constitution of Nigeria. Whether there is a Constitution left is debatable.

74. Death sentences have been passed by the courts, in particular by the special tribunals, without the safeguard of fair trial that is required by articles 6 and 14.1 of the International Covenant on Civil and Political Rights and there is no meaningful right of appeal against such sentences. Furthermore, the death sentence is imposed for offences which do not constitute "the most serious crimes", as required by article 6 of the Covenant. The Special Rapporteurs also consider public executions to be incompatible with human dignity.

75. The excessive use of force and firearms by law enforcement officials while carrying out their duties constitutes a violation of article 6 of the International Covenant on Civil and Political Rights. The failure of the Government to investigate fully cases in which individuals are killed or injured by law enforcement officials has created a situation of impunity which encourages further violations of international human rights norms.

76. The poor conditions that exist in places of detention, including severe overcrowding, lack of sanitation, lack of adequate food, clean water and health care have contributed to an unacceptably high level of death in custody and constitute a violation of article 10 of the International Covenant on

Civil and Political Rights, as well of as the Standard Minimum Rules for the Treatment of Prisoners. The Special Rapporteurs are particularly concerned that the Government of Nigeria has reportedly denied medical care to detainees who are in an alleged life-threatening condition.

77. The Government of Nigeria has failed to cooperate with the Commission on Human Rights by not allowing the Special Rapporteurs to carry out a visit to the country under conditions in accordance with the standard terms of reference for fact-finding missions of Special Rapporteurs/Representatives of the Commission on Human Rights.

78. Subject to what has already been said in the present report concerning the importance of and need for a constitutional order in Nigeria, the Special Rapporteurs make the following recommendations to the Government of Nigeria:

(a) All decrees revoking or limiting guarantees of fundamental rights and freedoms should be abrogated.

(b) All courts and tribunals must comply with all the standards of fair trial and guarantees of justice prescribed by article 14 of the International Covenant on Civil and Political Rights.

(c) All decrees which establish special tribunals or oust the jurisdiction of the ordinary courts should be abrogated.

(d) The ordinary courts should be given the necessary support and assistance to carry out their duties. Further, the Government must cease to interfere with and hinder the judicial process and must obey court orders.

(e) Those who have been convicted and sentenced by special tribunals in which there have been violations of the right to a fair trial, such as those convicted by the Special Military Tribunal in the so-called coup plotters' trial, should be pardoned and immediately released from detention. Further, these victims should be compensated for the injuries they have suffered as a result of these violations.

(f) In regard to the trial of Ken Saro-Wiwa and others, the Government of Nigeria should implement fully all the recommendations contained in the report of the fact-finding mission of the Secretary-General;

(g) The recommendations of the Human Rights Committee made at is fifty-sixth session should be implemented fully.

(h) Those who are awaiting trial should be afforded all the guarantees of a fair trial explicitly provided for in article 14 of the International Covenant on Civil and Political Rights, and those who have been convicted and sentenced should be granted the right to have their convictions and sentences reviewed by ordinary appellate courts in accordance with article 14.5 of the Covenant.

(i) The Government of Nigeria must take effective measures to prevent extrajudicial, summary or arbitrary executions, as well as torture, ill-treatment and arbitrary arrest and detention, by members of the security

forces. In particular, law enforcement officials should urgently receive training on the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

(j) The Government of Nigeria shall investigate allegations brought against law enforcement officials in order to bring before the courts those suspected of having committed or participated in crimes, punish them if found guilty and provide compensation to victims or to their families.

(k) The commissions of inquiry that have been established to investigate alleged extrajudicial executions or murders, such as the one established in the case of the murder of Mrs. K. Abiola, should complete their investigations and make their reports available to the public.

(l) The independence of the Nigerian Bar Association must be restored. It must be permitted to regulate and govern itself.

(m) The Government of Nigeria should take preventive measures to avoid further incidents of communal violence.

(n) The Government of Nigeria should take all necessary measures to ensure that the conditions of detention of persons deprived of their liberty fully meet the provisions of article 10 of the International Covenant on Civil and Political Rights and the Standard Minimum Rules for the Treatment of Prisoners. The overcrowding of prisons, which poses a serious health risk to the inmates, should be reduced by overcoming delays in the trial process, by considering alternative forms of punishment, by allowing the release on bail of non-violent pre-trial detainees and by increasing the number of prison places.

(o) Detainees should be allowed visits by family members and their attorneys. They must also be granted access to adequate medical care.

(p) The Government of Nigeria should consider the abolition of the death penalty and sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. At a minimum, it must respect the Safeguards guaranteeing the protection of the rights of those facing the death penalty.

(q) Section 30 of the Constitution, on the right to life, should be amended so that it conforms with article 6 of the International Covenant on Civil and Political Rights.

(r) In order to restore public confidence in its commitment to transition to democracy, the Government of Nigeria should fully implement all the recommendations of the Secretary-General's fact-finding mission concerning the implementation of the transition programme. In particular, the Government should abrogate Decree No. 2 of 1984, concerning arrest without trial of political opponents of the regime, and section 6 of Decree No. 1 of 1996, concerning the promulgation of the transition programme, as well as other decrees restricting political activities and freedoms, and it should release all political prisoners and detainees. Further, the Government should make

public the report of the Constitutional Conference submitted to the President in June 1995 and should register all political parties to enable them to participate in the forthcoming elections.

79. Given the seriousness of the human rights violations reported in Nigeria and the failure of the Government to cooperate with the Commission on Human Rights, the Commission should renew the mandate on the situation of human rights in Nigeria and appoint a country-specific special rapporteur. Further, as the Government read the mandates of the present thematic Special Rapporteurs restrictively and refused them permission to meet and interview detainees, a country-specific special rapporteur would be most appropriate, in the circumstances, to monitor and report on human rights violations generally.